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FOREWORD

By the Right. Hon. Lord Justice Scott

The moment is opportune for an effort by a long-established and famous firm of law publishers to familiarise the public with the law of land planning. The principles and practice of land use lie at the very root of our civilisation, for all our activities are dependent, in ultimate analysis, on the various uses we, as a nation and individually, make of our land. The principles of land use constitute a science and its practice an art: but it is only in quite recent years that either truth has become generally recognised. And yet the need of that recognition was growing ever more insistent throughout the period of industrial expansion in Britain. The science and the art were both understood by some great landowners of the eighteenth and nineteenth centuries who organised their town estates accordingly, but the urgent need for the systematic application of the right principles in general practice seems only to have come to the surface of the nation's consciousness in the last thirty years. And yet the history of our unguided and misguided town growth, not all of it under the pressure of industrial expansion, coupled with urban-minded ignorance and neglect of our agriculture and forestry, should have been a warning. Statistics are always suspect—at any rate to a simple-minded lawyer: but the ratio of the population of a country to the total area of its land is a basic figure which cannot be challenged. In 1811 England and Wales had a population of just over 10 millions, in 1861 20 millions, in 1891 about 29 millions, in 1911 36 millions and in 1939 41 millions. As was pointed out in the report of the departmental committee appointed in 1941, to advise on "Land Utilisation in Rural Areas", of which I was chairman, England then headed the list of all western countries for the year 1939 with 766 persons to the square mile, or 703 for England and Wales together, with Belgium at 702, France at 349, Germany at 347 and

U.S.A. at 43. With such growing density of people on the little land available, it is tragically astonishing that the first halting attempt to plan our land utilisation was not made till 1909.

In the Housing Act of that year Part II was devoted to *Town* Planning. As that title indicated, it was limited to land " in the course of development or likely to be used for building purposes ". That Act was amended by the Housing and Town Planning Act, 1919, but Planning was still limited to development. In 1925, Town Planning was separated from Housing, each being given an Act to itself; but the Planning Act was still the *Town* Planning Act. In 1932, a new Planning Act was passed. It acquired the name of the Town and Country Planning Act, because that name was on the Bill, which had been intended to apply to rural as well as urban areas: but the Act that emerged from Parliament was in essence an urban and not a rural measure. I say that, although after it became law, its inadequacy became obvious and various devices were adopted in an endeavour to use it as a rural measure. They were very artificial and unreal. That is shown by what I can only call the trick of zoning land by so many houses per acre, which, in order to sweep in purely rural land, was stretched to the extent of one house per fifty acres and in that guise what was really agricultural land was often inserted in schemes, in order to get zoning allowed as if the zone had been really for developed land and not a mere pretence of it. If all the houses so put into zoning schemes had been built, they would have housed a population of 300,000,000 in England and Wales in addition to our existing population. The process of bringing more reality into town and country planning was carried a step further in 1943, first by setting up a Ministry of Town and Country Planning and transferring to it from the Ministry of Health the whole functions of the Central Planning Authority; and secondly by the Town and Country Planning (Interim Development) Act of that year by which every planning authority was deemed to have passed a resolution to make a planning scheme: a fiction which meant that Statutory Planning, such as it was, became compulsory everywhere. The Act of 1944 took another step forward, *viz.*: that of authorising compulsory purchase by the local authority of (1) war-damaged areas, and (2) areas of bad layout and obsolete development for the purpose of their redevelopment. That was a great advance in urban planning. Those two Acts both gave effect to recommendations of the Scott Report of 1942, but the Act of 1947 was the first to apply to all land, rural as well as urban, the principles and practice of good planning; and now every acre of land in England and Wales, whether urban or rural, is within our planning legislation: and as by definition in the Act "land" includes water, so our rivers, lakes and foreshore even when the tide is high are within the Act.

Broadly speaking the Town and Country Planning Act, 1947, covers the whole field of the principles and practice of land use, *i.e.*, the whole field of physical planning. In my opinion it is a great statute—a really effective translation of all the needs of planning into one enforceable system. By it the utterly intractable problem under the 1932 Act—that of Compensation and Betterment—is finally eliminated.

As I understand Messrs. Sweet & Maxwell's project, it is to make generally known the contents of that legislation, including its details in the form of delegated legislation by regulations to be made by the Minister. It is essential that the public, and especially all technical advisers, should be really familiar with the whole of this new and most valuable legislation. It is that familiarity, and that alone, which will be the real safeguard against any bureaucratic tendency—of which I see no sign at the moment—creeping into the administration of the Act.

LESLIE SCOTT.

LAW COURTS.
March, 1948.

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Editorial Notes

For many years the law relating to town planning has been an esoteric mystery of local government in which the ordinary citizen took a very faint interest. The Town and Country Planning Act, 1947, has changed all this and now Planning Law writ large is something of which every person in any way connected with the ownership and management of property is uneasily conscious.

It is the function of *The Journal of Planning Law* to provide a meeting-ground to which the foremost experts may bring the contribution of their knowledge and background to the development of this massive experiment in the control of land use.

The Editorial Board has been assembled with this main object in view. It represents the views of the legal profession, of the planning authorities and of the surveyors, valuers and estate agents. Upon these rests the immediate responsibility of translating the new legislative system into a practical working reality which will fulfil the hopes of those who would see a better design for England and Wales without at the same time stultifying the projects on which proper development depends.

The contributors to the *Journal* have opened a vigorous and many-sided attack on the problems of Planning Law. They have been given considerable latitude and it will be observed that there is overlapping and may even be contradiction in the expression of their ideas. From such conflict there will eventually emerge a clearer appreciation of the difficulties and obscurities which are inherent in so great a scheme.

It should be mentioned here that any correspondence relating to anything published in the *Journal* should be addressed, not to any individual, but to

The Managing Editor,
The Journal of Planning Law,
3 Chancery Lane,
London, W.C.2.

It is a great privilege to be able to publish the Foreword written by Lord Justice Scott. The " Principles and Practice of Land Use " is a subject on which the Lord Justice has very recently delivered an address to the University of London and which he has very much at heart. It will be remembered that Lord Justice Scott was Chairman of the Committee whose report led to the passing of the Acquisition of Land (Assessment of Compensation) Act, 1919, and was Chairman of the Committee, 1941–2 upon Land Utilisation in Rural Areas, which produced the " Scott Report ".

The basis of the Town and Country Planning Act, 1947, may be said to be that the decision as to the use of a particular piece of land must, after due consideration of all interests affected, accord with the final balance of national interest.

The Act sets up a very powerful piece of machinery to ensure that it is the national interest which shall prevail. It is capable of working a very great transformation in the appearance of England and Wales. It is also capable of causing very considerable hardship to individuals. The wise and considerate use of their powers by the planning authorities may determine whether there will remain a sufficient number of persons energetic and capable enough to make a profitable use of the land. The balance of power has shifted so far from the property owner to the controlling authority as to give a new significance to the words from Wordsworth's poem on Rob Roy's Grave—

"   . . . The good old rule
Sufficeth them, the simple PLAN
That they should take who have the power
And they should keep who can."

J. B.

Control of Land Use

By Desmond Heap, LL.M., L.M.T.P.I.,

Comptroller and Solicitor to the Corporation of the City of London

I Planning Law and the Meaning of "Development".

II. Planning Law and Development Permission.

III. Planning Restrictions and the Recovery of Compensation.

IV. Planning and the Designation, Development and Disposal of Land by Local Authorities.

V. Planning Control and its Enforcement.

VI. Planning and the Preservation of Trees, Special Buildings and Amenities.

I. Planning Law and the Meaning of "Development"

1. The highlights of the Town and Country Planning Act, 1947, comprise

(i) the making of development plans;

(ii) the control of development;

(iii) the levying of development charges; and

(iv) the making of claims on a central fund for loss of development values.

It may be said that *development* (*i.e.*, the development of land which here includes buildings, structures and erections) is the very essence of the Act—the centre on which the whole of the Act turns and depends. Accordingly, an understanding of the meaning of "development", as that expression is used in the Act, is of prime importance to those who wish to appreciate fully the comprehensive and far-reaching scope of this enactment. It is proposed, therefore, in this article to examine in some detail those matters which constitute development for the purposes of the Act.

2. The misleading and perfunctory marginal note, "obligation to obtain permission for development", to s. 12 of the Act gives no clue to the fact that it is from sub-ss. (2), (3), (4), and (5) of s. 12 (as read in the light of the definitions contained in s. 119 (1)) that a knowledge of "development" and all that it means for the purposes of this Act is to be gleaned.

3. "Development" is defined with disarming brevity in s. 12 (2) as being one of two things, that is to say :—

either (a) the carrying out of building *operations*, engineering *operations*, mining *operations* or other *operations* in, on, over or under land;

or (b) the making of any material change in the *use* of any buildings or other land.

There is a great deal more in this short definition than meets the eye by reason of the elaborately extended meanings given by s. 119 (1) to many of the words used in the definition, but before going into details it may be noted at once that the definition itself clearly shows that development may be of two principal kinds in that it may involve the carrying out of some *operation* affecting land, or it may involve nothing more than a change in the *use* to which land is for the time being put.

An effort will now be made to break down the definition into its various components and to examine each of these in turn to see what it amounts to having regard to provisions of the interpretation section of the Act.

4. "Building operations"—This expression includes (s. 119 (1))—

(a) rebuilding operations;
(b) structural alterations of buildings;
(c) structural additions to buildings; and
(d) other operations normally undertaken by a person carrying on business as a builder.

The special definition of "building operations" leads in turn to the special definition of "building" which includes (s. 119 (1)) any structure or erection and any part of a building, structure or erection, but does not include plant or machinery comprised in a building, structure or erection. Apart from the building and the rebuilding of buildings, structures or erections and the making of structural alterations of, or additions to, buildings, structures or erections, other operations normally undertaken by a builder would include demolitions in connection with rebuilding and in connection with alterations. This and similar operations will be caught by the expression "building operations" and will accordingly constitute development under the Act.

5. "Engineering operations"—These include (s. 119 (1)) the formation or laying out of means of access to highways and "means of access" includes (again s. 119 (1)) any means of access, whether private or public, for vehicles or for foot

passengers, and includes a street. Thus it follows that engineering operations would include such a modest matter as the making of a gateway in the rear wall of a factory giving egress for pedestrians only from the factory yard into the back street. This being so, it will be noted that the control exercisable under this Act by a local planning authority over the making of means of access to highways is very much greater than ever it was by a local highway authority operating under the Restriction of Ribbon Development Act, 1935, where the highway authority could exercise such control only in respect of classified roads or roads made the subject of a resolution under the 1935 Act. As the making of *any* means of access (even into back streets) now constitutes development there is no longer any need for the control formerly exercisable with respect thereto under the Restriction of Ribbon Development Act, 1935, and the relevant portions of that Act are accordingly repealed.

6. "Land"—This expression means (s. 119 (1)) any corporeal hereditament including a building, a structure or an erection.

7. All the foregoing matters relate to development as dealt with in (a) of the definition set out in para. 3 above, which paragraph envisages the undertaking of some positive operation in, on, over or under any land, building, structure or erection. But it is not essential that land, buildings, structures or erections should themselves be subjected to any such positive operation at all before their development may be said to have occurred for the purposes of the Act, for, under (b) of the definition as given in para. 3 above, development may take place when any material change occurs, not in the land or the building, structure or erection itself but in *the use* to which the land, building, structure or erection is for the time being put. The Act contains no definition of the expression "material change" as here used, although for the avoidance of doubt two examples of what may be said to constitute a material change are quoted in s. 12 (3) and will be referred to later.

The Town and Country Planning Act, 1932, employed the expression "change in the use" and the 1947 Act employs the same expression but qualifies it with the word "material". It is clear from this that no slight or trivial change of use will amount to development but it is difficult to draw any hard and fast line. It may well be that whilst material change of use is difficult to define theoretically it will be readily recognisable when in practice it occurs. There can be no doubt that a material change of use occurs when a private dwelling-house is turned into a shop because there is a change from a residential user to a business user and this is without doubt a material change from a planning point of view. The position, however, is not so clear when the *nature* of the use remains constant but its *type* is changed as would be the case when a confectioner's shop is changed to a hairdressing establishment. In this instance the nature of the user (which is a business user) remains constant but the type of the business is changed. It is submitted that this may yet constitute a material change of use especially when it is remembered that, by s. 12 (3) (*a*), the use as two separate dwelling-houses of a building previously used as one dwelling-house is declared to involve a material change in the use of the building, a state of affairs which might well have been doubted in view of the fact that the user of the building (which is a residential user) remains constant throughout the change.

8. After the definition of development has been dealt with generally in sub-s. (2) of s. 12 (the provisos to which subsection will be referred to later) sub-ss. (3) and (4) of s. 12 proceed to give examples of three uses of land which are declared to involve a material change of use and which accordingly constitute development under the Act. These three uses are summarised as follows :—

(1) The use as two or more separate dwelling-houses of any building previously used as a single dwelling-house (s. 12 (3) (*a*)).

(2) The deposit of refuse or waste materials even though they are deposited on a site which is already used for the purpose provided that either, (a) the superficial area, or (b) the height of the deposit is thereby extended. But it is to be noted that no such deposit of refuse or waste materials on an existing dump will constitute development if the height of the existing dump is not raised above the level of the land adjoining the site of the dump and the superficial area of the dump is not extended (s. 12 (3) (*b*)), from all of which it follows that one can apparently continue to dump waste materials into existing holes in the ground (caused, for example, by mining or quarrying) until the holes are filled to the surface of the surrounding land provided that the holes have vertical sides.

(3) Control over the display of advertisements is to be dealt with by regulations made under s. 31 of the Act but, without prejudice to the provisions of any such regulations, the display

of advertisements on the external part of a building which is not normally used for such display is to be treated as a material change of use and therefore development of the building (s. 12 (4)) which provision will apparently have the effect of preventing any recurrence of the decision in *Mills & Rockleys* v. *Leicester Corporation*, [1946] K. B. 315; 115 L. J. K. B. 373. In connection with this provision "advertisement", it is to be remembered, is most widely defined (in s. 119 (1)) so as to mean any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction, and without prejudice to the foregoing provision includes any hoarding or similar structure used or adapted for use for the display of advertisements. This definition is wide enough to cover not only references to the digestive attributes of "Somebody's Pills", whether coupled or not with plain statements of fact giving the number of miles to London, but also such plain statements themselves as well as direction signs indicating the way to seaside resorts, fun fairs and so forth.

9. Turning to the six provisos to sub-s. (2) of s. 12, it is found that these provisos give examples of three operations and three uses which are *not* to constitute development. These will now be examined in turn.

10. As to the three operations, the position is as follows:—

(1) The carrying out of works of maintenance, improvement or other alteration to any building, structure or erection is not development, *provided* such works affect only the interior of the building or do not materially affect its external appearance (s. 12 (2) (*a*)). Thus the execution of internal conversions will not constitute development provided they can be done without materially affecting the outside of the building concerned. In this connection it is necessary to bear in mind that the making of additional windows and doorways to a building in association with internal conversion may well be said to affect materially the external appearance of the building and thereby bring the internal conversions within the category of development for which consent will be required. Those who seek to convert large single dwelling-houses into flats might do worse than keep this point in mind.

(2) The carrying out of maintenance and improvement works to highways by a local highway authority is not development (s. 12 (2) (*b*)).

(3) The breaking open of streets, etc., for the inspection, repair or renewal of sewers, mains, pipes, cables, etc., by a local authority or a statutory undertaker is not development (s. 12 (2) (*c*)).

11. As to the three uses, the position is as follows:—

(1) The use of any land or any buildings, structures or erections, within the curtilage of a dwelling-house for purposes incidental to the enjoyment of the dwelling-house as a dwelling-house is not development (s. 12 (2) (*a*)). Here it is important to note that by virtue of s. 119 (1) the word "use" in relation to land does not include the use of land by the carrying out of building operations or any other operations on the land. Thus, it follows that the construction of *new* buildings, structures or erections, even though they are within the curtilage of a dwelling-house, and even though they are to be used in connection with the enjoyment of the dwelling-house as a dwelling-house (*e.g.*, a new garage) do constitute development.

(2) The use of land for agriculture or forestry, and the use for any of those purposes of any building, structure or erection occupied with the land so used is not development (s. 12 (2) (*e*)). Again (and for the reasons given in the preceding sub-paragraph) this provision does not cover *new* agricultural or *new* forestry buildings, structures or erections the construction of which does constitute development. It is also to be remembered that "agriculture", by s. 119 (1), includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes.

(3) It is open to the Minister, acting under s. 12, to make an order declaring classes of general types of use within which changes of particular use may be made. If and when the Minister does make any such order, then in the case of land or buildings used for a purpose of any class specified in the order, a change of use to any other purpose of the same class will not constitute development (s. 12 (2) (*f*)).

12. It remains to consider sub-s. (5) of s. 12 of the Act. Sub-s. (5) deals with three types of case which, whilst strictly constituting development, can yet be undertaken without

obtaining the development permission which (were it not for sub-s. (5)) would otherwise be required. These three cases are as follows:—

(1) The resumption of the *normal* use of land, buildings, structures or erections which on "the Appointed Day" (which, by the Town and Country Planning Act, 1947 (Appointed Day) Order, 1948, means July 1, 1948) are being used temporarily for some other purpose does not need permission, provided such normal use, when originally begun, was in accordance with previous planning control as defined in s. 75 (9) of the Act (s. 12 (5) (*a*) and proviso (i)). Thus on July 1, 1948, a plot of land may be in use for the purpose of housing for "positively one week only" a travelling circus. When the circus moves the land may revert, without permission, to its normal use of (for example) a car park, provided the car park, when it was first opened, complied with such planning control (whether under interim development or under an operative planning scheme) as then existed.

(2) The use for the occasional purpose hereinafter mentioned of any land, buildings, structures or erections which on July 1, 1948, are *normally* used for one purpose but which are also used (whether at regular intervals or not) for some other *occasional* purpose does not require permission (s. 12 (5) (*b*)). Thus if a private open space is let annually on May 1 for a May Day Fair, or if it is let occasionally at irregular intervals for accommodating travelling menageries, it may continue, after July 1, 1948, to be let in either of these ways without the need for obtaining development permission.

(3) Development permission is not required for the use of land, buildings, structures or erections unoccupied on July 1, 1948 (provided they have not been constantly unoccupied on and from January 7, 1937) for the purpose for which they were last used, provided always that such purpose accorded with previous planning control as defined in s. 75 (9) of the Act (s. 12 (5) (*c*) and provisos (i) and (ii)).

13. The requirement in items (1) and (3) immediately above as to conformity with previous planning control is important. There can be no resumption after July 1, 1948, except with permission, of any former use of land, buildings, structures or erections if such former use when previously in operation contravened such planning control as then existed, that is to say, if such former use was in contravention of an operative planning scheme or (if there was no operative

scheme in force) was not in accordance with a permission granted by or under an interim development order.

14. From the foregoing paragraphs it will be seen that the determination of whether a particular operation or use constitutes "development" within the meaning of the Act may be a nice point. The Act recognises this and makes provision for the determination of doubtful cases by application to the local planning authority (s. 17 (1)), from whose decision there is a further appeal to the Minister (ss. 17 (2) and 16 (1)).

It is worthy of special mention in these days when ministerial decisions are so often final that if an applicant is disatisfied with a decision of the Minister that a particular operation or use constitutes development and, ignoring the decision, proceeds to carry out the operation or to use the land in the way for which he has failed to secure permission then if an "enforcement notice" is served upon him by the local planning authority under s. 23 of the Act, the applicant has a right to appeal to petty sessions (s. 23 (4)) and it is expressly provided that the Minister's decision is not final for the purposes of such appeal (s. 17 (2)).

MINISTRY OF TOWN AND COUNTRY PLANNING

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Planning as Affecting Interests in and Value of Land

By E. J. Rimmer and J. Stuart Daniel, Barristers-at-Law

I. Main Consequences of the Act of 1947.
II. Compulsory Acquisition.
III. New Principles of Compensation for Compulsory Acquisition.
IV. Claims upon and Payments out of Central Fund.
V. Development Charges.
VI. Mineral Rights and other Special Cases.

I. Main Consequences of the Act of 1947

1. The planning legislation of the past has often been criticised for its negative character. Although the earlier Acts authorised and in some cases directed the preparation of " schemes ", the main feature of their operation in practice was the control of development by veto rather than by positive action. Moreover, under the old system the refusal of planning permission meant the ultimate payment of compensation if the refusal prevented the most profitable development of the land, and this inevitably acted as a brake upon planning authorities, and sometimes on the Minister himself, in the exercise of their restrictive powers.

The Town and Country Planning Act, 1947, has redressed the balance with a vengeance. Not only does it require the planning authorities (the councils of counties and county boroughs) to submit development plans for their areas within three years of the appointed day, but it makes it infinitely easier for them to plan and to ensure that land is used in the manner proposed by the plan by removing the obstacles which existed previously and by the grant of wider powers. This easing of the path for planning is necessarily achieved by measures which substantially affect the rights of the individual property owner and the value of his land. It is this aspect of the Act, rather than the greater opportunities for planning which it provides, which will be dealt with in this series of articles. What follows is a synopsis of the main features which will be considered.

2. The central feature of the new structure is the transfer

of the development value of undeveloped land, and the redevelopment value of built-up property, from the owner to the State. The method by which this will be achieved will be the levy of a development charge payable when the development or redevelopment takes place.

It is important to remember that permission is required for all classes of " development " as defined by the Act (and this definition is extremely wide), unless future development orders otherwise provide. The classes of development which will escape the incidence of a development charge are of an extremely limited character. They are set out in the Third Schedule to the Act and include, for instance, rebuilding to a limit not exceeding by more than one-tenth the cubic content of the original building; enlargement, improvement or alteration within the same limit; the use of one dwelling-house as two or more separate dwellings; and various minor developments which will be considered in more detail later.

It must also be emphasised that the expression used in the marginal note of s. 80 of the Act, namely, " Land ripe for development ", is misleading unless the section is read carefully as a whole. It is true that under this section an owner may in certain circumstances obtain a certificate from the Minister which will enable him to escape a development charge. But he must be able to do very much more than show that his land is " ripe for development " in the ordinary sense. There are precise and technical requirements which must be satisfied before a certificate is granted which have no direct bearing on the potentialities for development which the land possesses. These will be dealt with in a later article. It is the misunderstanding of this section which has more than anything else caused the property market to react so slowly to the effect of the Act upon land values.

3. Broadly speaking, therefore, the effect of the Act is that the value of permitted development is transferred to the State. Thus an owner may no longer be able to sell " good building land " at a higher price than it would fetch for agriculture; for the purchaser, if he is going to build, will have to pay a development charge and will adjust accordingly the price which he is prepared to pay. The charge will be based on the increase in the value of the site resulting from the permitted development. As a plot of land with frontage to an existing highway in the heart of the city is valuable for little else than its prospects of development, the value resulting from permission to develop it will represent practically the whole of its

pre-Act value. Regulations will be made governing the method of assessment and it is hoped that these may be discussed in a later article. It seems possible that the charge may, in some cases, be something less than the increase in site value resulting from the permission to carry out the development, but there is no reason to think that, in the majority of cases, the full development value will not be charged.

4. As regards mining and the working of minerals, regulations to be made under the Act may defer development charges for three years after the appointed day; thereafter the charges are to be calculated by reference to the amount of minerals got from time to time in accordance with the permission of the local planning authority.

5. It will be part of the functions of the Central Land Board to impose and collect development charges. First, therefore, an owner must obtain permission from the planning authority to develop : then before the development is carried out he must pay the development charge to the Central Land Board, though it will be within the powers of the Board to spread payments over a period of years.

The earlier attempt to legislate for the recovery of betterment value based on the beneficial effect which a planning scheme might have on the value of the land has thus been abandoned. The development charge will relate solely to the specific development to be carried out, the value of which to the land may be quite independent of the effect of " planning ". It follows that land which has already been developed to its best advantage will have a tendency to rise in value. On the other hand an owner will not in future, except in cases covered by Part II of the Third Schedule, receive compensation for the refusal by the planning authority of permission to develop. This is naturally so, since the development value, other than that attributable to Third Schedule development, is no longer considered to be part of the owner's property, and he is assumed therefore to have lost nothing (in terms of value) if permission to develop is refused.

6. The elimination of development value will be tempered by the establishment of a central £300 million fund out of which payments will be made to owners of land in England, Scotland and Wales who suffer hardship by the loss of development value as a result of the Act. This of course will not be a continuing fund. The Central Land Board will receive the claims and distribute payments up to the limit of the fund and

this they will do once and for all. The Treasury are to prepare a scheme under which payments will be made. But there can be little doubt that it will take a considerable time before the sifting of claims and payments out can be completed, or that the amount received will in most cases be very much less than the actual depreciation in value caused by the Act. It is possible of course that certain classes of claimants will be given more favourable treatment than others.

7. The Act also extends considerably the powers of compulsory purchase which have hitherto been possessed by government departments, local authorities and statutory undertakers. The new powers are contained in Part IV of the Act and are closely related to Part II which deals with development plans. It is not within the scope of this series of articles to consider in detail the duties of local planning authorities under Part II, but these will be summarised in due course in so far as they affect this subject. Much wider powers will in future be available for the designation of land as subject to compulsory purchase. It will be possible for land to be so designated under two main categories.

First, a development plan may " designate " for acquisition by any minister, local authority or statutory undertaker land which the plan has allocated " for the purpose of any of their functions ". This last phrase in itself constitutes an extension of the previous specific and defined purposes for which land could be acquired.

The second category is land which may be designated as subject to compulsory acquisition by " the appropriate local authority ". This comprises land in an area defined by the plan as an area of comprehensive development (including land contiguous or adjacent to such an area); and any other land which in the opinion of the local planning authority ought to be subject to compulsory acquisition in order to secure its use in the manner proposed by the plan. Comprehensive development means the development or redevelopment of an area as a whole for various purposes mentioned in the Act or " for any other purpose specified in the plan ". This could hardly be wider.

8. There are provisions for the compulsory acquisition of designated land, in certain circumstances, before the development plan has become operative. On the other hand " designation " will remain in force for twelve years without being necessarily consummated by acquisition. It follows that owners will in far more cases than formerly be subject to the

inconvenience of having their land so "designated" without knowing how long it will be before the actual purchase will follow. It is to be hoped that local authorities will assist owners by giving them as long a warning as possible and by helping them to obtain, or possibly by waiting until they have obtained, alternative accommodation. An owner whose property is not designated will of course enjoy comparative security—but this will be by no means complete since development plans may be amended.

9. The compensation to be paid on compulsory purchase will in future take into account the fact that the development value no longer belongs to the owner of the property. The provisions in the Act which deal with compensation for compulsory acquisition are of general application, that is to say they amend the law generally and are not confined to a "planning" context. Previously compensation has been assessed on the principle of a willing buyer and a willing seller, with the qualification imposed by the Town and Country Planning Act, 1944, that such assessment should be by reference to 1939 prices. In future the 1939 standard will disappear and current values will be re-established. But they will be current values shorn of development value. If a property is fully developed, well and good. But if not, then the compensation will be the "restricted value", that is to say, the value on the assumption that planning permission would not be given for any development except the limited classes of development in the Third Schedule. Value attributable to vacant possession will be excluded (except in the case of agricultural land) by means of a notional lease which will be assumed to commence at the date of the notice to treat and to expire on January 1, 1954.

10. The Act provides specially for the assessment of compensation in the cases of war-damaged and requisitioned property, and there are transitional provisions for compensation in the case of land acquired between the passing of the Act and the appointed day. The latter are only of ephemeral interest, but since the acquisition of war-damaged and requisitioned property may continue for some time the compensation payable in these cases will be considered in detail. It is particularly to be noted that where war damage has not been made good and the appropriate payment under the War Damage Act, 1943 would, apart from the compulsory purchase, be a payment of costs of works, compensation will be assessed as if the damage had been made good,

while the right to receive the converted value payment will vest in the acquiring authority.

Part VIII of the Act of 1947 deals with special cases, some of which will be discussed in the final article in this series. The treatment of mineral workings is of particular interest; so too is the case already referred to of land " ripe for development " on the appointed day, and the calculation of the development value of land which is requisitioned on the appointed day for the purpose of assessing claims upon the central fund.

11. The above is little more than a précis of some of the provisions of the Act of 1947. While the provisions themselves will of necessity be set at greater length in the succeeding articles an attempt will also be made to assess their impact upon the ordinary property owner. The main outline of the Act is clear but its detailed application to individual cases raises doubts and queries. Some of them will no doubt be resolved by the many regulations which are to be issued under the Act. Others may have to wait till experience of the Act in operation has either clarified them or brought them to a head.

One thing is reasonably certain and that is that the value of land and buildings will be affected by a greater number of uncertain factors than it has been in the past. A purchaser who intends to develop will have to take into account for instance his chance of obtaining permission for the development, the development charge he will have to pay, and the risk of the property being compulsorily acquired. A vendor will have to resign himself to the operation of these factors in the estate market. He will also have to estimate while he may still do so, his chances of recovering some amount out of the central fund; and what such amount is likely to be.

To recapitulate, there can be no doubt that the wide powers now granted to planning authorities will have as their obverse serious consequences affecting the ownership of property which is either undeveloped or not developed to its best advantage and these consequences require careful consideration.

Summary of the Statute Law relating to Town and Country Planning as at April 1, 1948

1. Town and Country Planning Act, 1947. The Town and Country Planning Act, 1947, consolidates the main law relating to town and country planning. The Act received the Royal Assent on August 6, 1947, but it does not come into force as a whole until the "appointed day" (s. 102) which has been fixed for July 1, 1948 (Town and Country Planning (Appointed Day) Order, 1948). Certain provisions, however, came into force on the passing of the Act (s. 120).

The provisions of the Town and Country Planning Act, 1947, which are in force are as follows:—

Sections 2, 3. These relate to the Central Land Board. This body has been appointed (House of Commons, November 11, 1947), the Chairman being Sir Malcolm Eve, who is already chairman of the War Damage Commission. The appointment and terms of office, etc., of the members of the Board are regulated by the Central Land Board Regulations, 1947. The functions of the Board include the collection of development charges and the payment of compensation for loss of development rights.

Sections 37 (2), 38 (2) and any other provisions of Part IV of the Act which relate to the acquisition of land under either of those sub-sections. The sub-sections give powers of compulsory purchase during the period before a development plan has become operative.

Part V (ss. 50–57) of the Act (amendments of the law relating to compensation for compulsory acquisition of land); so much of s. 91 (land in process of compulsory acquisition) as relates to land acquired before the appointed day; Part I of Sched. 9 and s. 113 (2) (repeals) so far as it relates thereto. The effect of this is that the compensation on compulsory acquisition is no longer assessed on the basis of 1939 values (as prescribed by ss. 57–61 of the Town and Country Planning Act, 1944). Compensation is now normally payable on the "current restricted value" of land shorn of its potential development value and assessed in strict accordance with the

Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2, rules 2–5, as modified by the Town and Country Planning Act, 1947. These compensation provisions are not confined to acquisition for planning purposes. They are applicable to all compulsory acquisitions by local authorities, Government departments and public authorities and statutory undertakers.

2. Ministry of Town and Country Planning. The functions of the Minister of Health in relation to planning were transferred to the Minister of Works and Planning under the Minister of Works and Planning Act, 1942, and thence to the Minister of Town and Country Planning under the Minister of Town and Country Planning Act, 1943, by the Minister of Town and Country Planning (Transfer of Powers) (No. 1) Order, 1943, as from February 10, 1943.

3. Planning control until the "appointed day". The principal Act relating to planning, until July 1, 1948, is the Town and Country Planning Act, 1932, which repealed the earlier planning legislation and laid down an elaborate planning code. The main weaknesses in this Act lay in its negative character and the heavy burden of compensation imposed on planning authorities; and under it authorities were empowered but not obliged to make planning schemes. The Town and Country Planning (Interim Development) Act, 1943, brought the whole of England and Wales within planning control as if resolutions to prepare a planning scheme had been passed everywhere. The Town and Country Planning Act, 1944, dealt with the problems of "blitz" and "blight"—the replanning of areas which were the subject of extensive war damage and of areas of bad lay-out and obsolete development. It introduced a measure of positive planning which had hitherto been absent.

The Acts of 1932 and 1943 are totally repealed (prospectively) by the Town and Country Planning Act, 1947. The Act of 1944 is also virtually repealed (prospectively) because such parts of the Act as remain unrepealed are incorporated in Sched. 11 to the Act of 1947 in an amended form. Certain parts of the Act of 1944 survive in an amended form for the purpose of the New Towns Act, 1946, and the repeal of any enactment contained in the Act of 1944 which is applied by the New Towns Act, 1946, is not to affect any such enactment as so applied (see para. 5 below).

In addition there are miscellaneous powers contained in a variety of statutes: Advertising Stations (Rating) Act, 1889, s. 5 (advertisement hoardings), Advertisements Regulation Act, 1907 (byelaws), Public Health Acts Amendment Act, 1907, s. 91 (sky signs), Advertisements Regulation Act, 1925 (bye-laws), Petroleum (Consolidation) Act, 1928 (petrol filling stations), Civil Defence Act, 1939, s. 70 (enlargement of scope of schemes), War Damage Act, 1943, s. 20 (provisions for securing that in relation to war damage payments there shall be uniformity with planning requirements). All these provisions except the last mentioned are repealed (prospectively) by the Town and Country Planning Act, 1947.

4. Acquisition of land, etc. The statute law relating to the acquisition of land and the assessment of compensation is contained in the Lands Clauses Acts, 1845 to 1895, the Railway Clauses Consolidation Act, 1845, ss. 77–85 (where applied), the Acquisition of Land (Assessment of Compensation) Act, 1919, and the Acquisition of Land (Authorisation Procedure) Act, 1946, and Part V of the Town and Country Planning Act, 1947.

The power to acquire land compulsorily or by agreement is conferred either by a particular Act dealing with the purpose for which the land is required or by virtue of the designation of the land as subject to compulsory acquisition under the Act of 1947, followed, in the case of compulsion, by an order of the appropriate Minister. The procedure whereby the authority or body which desires to acquire land is authorised to do so has to a very large extent been made uniform by the Acquisition of Land (Authorisation Procedure) Act, 1946. The procedure whereby the land is acquired is regulated by the Lands Clauses Acts as modified, particularly in regard to entry, by the Act of 1946, or the particular Act under which the land is acquired, and the mode in which the compensation is assessed is prescribed by the Acquisition of Land (Assessment of Compensation) Act, 1919. The basis on which compensation is to be paid is laid down by the Town and Country Planning Act, 1947, Part V, as to which see para. 1 above.

5. New towns. The founding of new towns is facilitated by the New Towns Act, 1946. This Act applies a considerable part of the Town and Country Planning Act, 1944, with modifications, and those portions of the Act of 1944 thus applied continue to be effective for the purposes of the New Towns Act, 1946, notwithstanding their repeal by the Act of 1947 for all other purposes.

6. Restriction of ribbon development. The Restriction of Ribbon Development Act, 1935, conferred upon highway authorities power to exert an effective control over undesirable development along or near the frontages of roads. The Act was amended by the Restriction of Ribbon Development (Temporary Development) Act, 1943. The truly planning provisions of the Act of 1935 have been prospectively repealed by the Town and Country Planning Act, 1947, and the Act of 1943 has been wholly repealed prospectively.

7. Distribution of industry. The Distribution of Industry Act, 1945, provides for the development of areas where there is a special danger of unemployment and in conjunction with the Town and Country Planning Act, 1947, s. 14 (4), for the control of industrial development in other areas where such control is desirable for economic, social or strategic reasons.

8. War-time planning contraventions. During the war, 1939–1945, much work was carried on which did not comply with the building laws or with planning control, and the Building Restrictions (War-Time Contraventions) Act, 1946, regulates the enforcement of such laws and control and gives power to sanction war-time non-compliance.

9. Requisitioned land and war works. The Requisitioned Land and War Works Act, 1945, authorised for a period the acquisition of land used or dealt with for war works, the permanent stopping up or diversion of highways stopped up or diverted under emergency powers, the maintenance and use of works, the removal of works and restoration of land and the payment and adjustment of compensation. Part VIII, which provides for elimination of Government war works or damage by Government war use as a factor in compensation payable on the acquisition of land, applies to acquisitions of land under the Act of 1945 and under powers other than those conferred by the Act of 1945 itself. The Act is extended and in part made permanent by the Requisitioned Land and War Works Act, 1948, which also amends the basis of compensation for taking possession of land under emergency powers.

10. Licensing planning. The Licensing Planning (Temporary Provisions) Acts, 1945 and 1946, make provision as to justices' licences in war-damaged areas and certain areas related to war-damaged areas.

Statutes in Force relating to Town and Country Planning on April 1, 1948

Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18).

Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 77–85.

Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106).

Lands Clauses Consolidation Act, 1869 (32 & 33 Vict. c. 18).

Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15).

Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11).

Acquisition of Land (Assessment of Compensation) Act, 1919 (9 & 10 Geo. 5, c. 57).

Town and Country Planning Act, 1932 (22 & 23 Geo. 5, c. 48) (prospectively repealed).

Restriction of Ribbon Development Act, 1935 (25 & 26 Geo. 5, c. 47).

Trunk Roads Act, 1936 (1 Edw. 8 & 1 Geo. 6, c. 5).

Minister of Town and Country Planning Act, 1943 (6 & 7 Geo. 6, c. 5).

Town and Country Planning (Interim Development) Act, 1943 (6 & 7 Geo. 6, c. 29) (prospectively repealed).

Restriction of Ribbon Development (Temporary Development) Act, 1943 (6 & 7 Geo. 6, c. 34) (prospectively repealed).

War Damage Act, 1943 (6 & 7 Geo. 6, c. 21), s. 20.

Town and Country Planning Act, 1944 (7 & 8 Geo. 6, c. 47).

Licensing Planning (Temporary Provisions) Act, 1945 (8 & 9 Geo. 6, c. 15).

Distribution of Industry Act, 1945 (8 & 9 Geo. 6, c. 36).

Statutory Orders (Special Procedure) Act, 1945 (9 & 10 Geo. 6, c. 18).

Trunk Roads Act, 1946 (9 & 10 Geo. 6, c. 30).

Licensing Planning (Temporary Provisions) Act, 1946 (9 & 10 Geo. 6, c. 53).

Building Restrictions (War-Time Contraventions) Act, 1946 (9 & 10 Geo. 6, c. 35).

Acquisition of Land (Authorisation Procedure) Act, 1946 (9 & 10 Geo. 6, c. 49).

Licensing Planning (Temporary Provisions) Act, 1946 (9 & 10 Geo. 6, c. 53).

New Towns Act, 1946 (9 & 10 Geo. 6, c. 68).

Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51).

Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17).

Orders in Force relating to Town and Country Planning on April 1, 1948

1. Acquisition of Land (Assessment of Compensation) Rules, 1919 (S. R. & O., 1919, No. 1836), dated December 2, 1919, made under the Acquisition of Land (Assessment of Compensation) Act, 1919.
2. Acquisition of Land (Assessment of Compensation) Fees Rules, 1931 (S. R. & O., 1931, No. 157), dated March 20, 1931, made under the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 3 (6).
3. Town and Country Planning (General Transitional) Order, 1933 (S. R. & O., 1933, No. 239), dated March 21, 1933, made under the Town and Country Planning Act, 1932, s. 52 (2). This Order was amended by the Town and Country Planning (General Transitional) Amendment Order, 1945 (S. R. & O., 1945, No. 1304).
4. Town and Country Planning Regulations, 1933 (S. R. & O., 1933, No. 742), dated July 27, 1933, made under the Town and Country Planning Act, 1932. These Regulations were amended by the Town and Country Planning Amendment Regulations, 1945 (S. R. & O., 1945, Nos. 661, 1643).
5. Local Land Charges Rules, 1934 (S. R. & O., 1934, No. 285), dated March 22, 1934, made under the Land Charges Act, 1925. These Rules have been amended by the Local Land Charges (Amendment) Rules, 1946 (S. R. & O., 1946, No. 414).
6. Town and Country Planning (Determination of Questions as to Compensation and Betterment) Rules, 1934 (S. R. & O., 1934, No. 778), dated August 1, 1934, made under Acquisition of Land (Assessment of

Compensation) Act, 1919, as extended by the Town and Country Planning Act, 1932, s. 23.

7. Road Standard Widths Regulations, 1936 (S. R. & O., 1936, No. 161), dated February 29, 1936, made under the Restriction of Ribbon Development Act, 1935, s. 1.
8. Restriction of Ribbon Development (Compulsory Purchase) Regulations, 1936 (S. R. & O., 1936, No. 389), dated May 1, 1936, made under the Restriction of Ribbon Development Act, 1935, s. 13.
9. Restriction of Ribbon Development (Determination of Internal Space of Buildings) Order, 1936 (S. R. & O., 1936, No. 777), dated July 28, 1936, made under the Restriction of Ribbon Development Act, 1935, s. 17 (8).
10. Restriction of Ribbon Development (Power to Provide Parking Places) London, Order, 1936 (S. R. & O., 1936, No. 1088), dated October 12, 1936, made under the Restriction of Ribbon Development Act, 1935, s. 20 (2).
11. Restriction of Ribbon Development (Provisions of Means of Entrance and Egress to Buildings) London, Order (S. R. & O., 1936, No. 1089), dated October 12, 1936, made under the Restriction of Ribbon Development Act, 1935, s. 20 (3).
12. Trunk Roads (Delegation of Powers) Order, 1937 (S. R. & O., 1937, No. 34), dated January 25, 1937, made under the Trunk Roads Act, 1936, s. 5 (4).
13. Trunk Roads Act, 1936 (Substitution of New Routes) Order (S. R. & O., 1937, No. 211), dated March 19, 1937, made under the Trunk Roads Act, 1936, s. 1 (5).
14. Trunk Roads Act, 1936 (Modification of Description of Routes) No. 1 Order, 1937 (S. R. & O., 1937, No. 642), dated July 5, 1937.
15. Trunk Roads Act, 1936 (Modification of Description of Routes) No. 2 Order, 1937 (S. R. & O., 1937, No. 932), dated October 12, 1937.
16. Trunk Roads Act, 1936 (Modification of Description of Routes) No. 3 Order, 1937 (S. R. & O., 1937, No. 1035), dated November 12, 1937.
17. Ministry of Works and Planning (Transfer of Powers) (No. 1) Order, 1942 (S. R. & O., 1942, No. 1313), dated July 1, 1942, made under the Minister of Works and Planning Act, 1942.

18. Minister of Town and Country Planning (Transfer of Powers) (No. 1) Order, 1943 (S. R. & O., 1943, No. 206), dated February 10, 1943, made under the Town and Country Planning Act, 1943.
19. Local Land Charges (Amendment) Rules, 1943 (S. R. & O., 1943, No. 1532), dated October 23, 1943, made under the Land Charges Act, 1925.
20. Town and Country Planning (Additional) Regulations, 1944 (S. R. & O., 1944, No. 319), dated March 9, 1944, made under the Town and Country Planning Act, 1932, as amended by the Town and Country Planning (Interim Development) Act, 1943.
21. Acquisition of Land (Valuation for Supplemental Compensation) Regulations, 1945 (S. R. & O., 1945, No. 370), dated March 13, 1945, made under the Town and Country Planning Act, 1944, s. 60 (2).
22. Town and Country Planning General (Interim Development) Direction, 1945 (S. R. & O., 1945, No. 419), dated April 23, 1945, made under the Town and Country Planning (Interim Development) Act, 1943, s. 6 (1).
23. Town and Country Planning (Development by Authorities) Regulations, 1945 (S. R. & O., 1945, No. 532), dated May 10, 1945, made under the Town and Country Planning Act, 1944, s. 32.
24. Town and Country Planning Amendment Regulations, 1945 (S. R. & O., 1945, No. 661), dated June 4, 1945, made under the Town and Country Planning Act, 1932.
25. Acquisition of Land (Owner-Occupier) Regulations, 1945 (S. R. & O., 1945, No. 759), dated June 18, 1945, made under the Town and Country Planning Act, 1944, s. 58 (5).
26. Town and Country Planning Act, 1944, Compulsory Purchase (Contemporaneous Procedure) Regulations, 1945 (S. R. & O., 1945, No. 1035), dated August 18, 1945, made under the Town and Country Planning Act, 1944, Sched. II, para. 6.
27. Town and Country Planning Act, 1944 (Particulars and Form of Orders and Notices) Regulations, 1945 (S. R. & O., 1945, No. 1036), dated August 18, 1945, made under the Town and Country Planning Act, 1944, s. 63.
27A. Licensing Planning Regulations, 1945 (S. R. & O., 1945, No. 1063), dated August 21, 1945, made under the

Licensing Planning (Temporary Provisions) Act, 1945 (8 & 9 Geo. 6, c. 15), s. 11.

28. Acquisition of Land (Compensation for War Damaged Land) Rules, 1945 (S. R. & O., 1945, No. 1216), dated September 28, 1945, made under the Town and Country Planning Act, 1944, Sched. VIII.

29. Town and Country Planning (General Transitional) Amendment Order, 1945 (S. R. & O., 1945, No. 1304), dated October 19, 1945, made under the Town and Country Planning Act, 1932, s. 52 (2), as amended by the Town and Country Planning (Interim Development) Act, 1943, s. 11.

30. Town and Country Planning Amendment Regulations (No. 2), 1945 (S. R. & O., 1945, No. 1643), dated December 21, 1945, made under the Town and Country Planning Act, 1932.

31. Town and Country Planning Act, 1944, Compulsory Purchase (Appointed Day) Order, 1945 (S. R. & O., 1945, No. 1666), dated December 28, 1945, made under the Town and Country Planning Act, 1944, s. 1 (1).

32. Town and Country Planning Act, 1944 (Registration of Orders) Rules, 1945 (S. R. & O., 1945, No. 1677), dated December 27, 1945, made under the Town and Country Planning Act, 1944, s. 17, and the Land Charges Act, 1925, s. 15.

33. Town and Country Planning (Airfields) (Interim Development) Direction, 1946 (S. R. & O., 1946, No. 370), dated March 18, 1946, made under the Town and Country Planning (Interim Development) Act, 1943, s. 6 (2), as amended by the Town and Country Planning Act, 1944, s. 31 (2). This Direction was added to by the Town and Country Planning (Airfields) (Interim Development) Direction (No. 2), 1946.

34. Compulsory Purchase of Land Regulations, 1946 (S. R. & O., 1946, No. 573), dated April 18, 1946, made under the Acquisition of Land (Authorisation Procedure) Act, 1946. These Regulations were amended by the Compulsory Purchase of Land Amendment Regulations, 1947.

35. Acquisition of Land (Increase of Supplement) Order, 1946 (S. R. & O., 1946, No. 1163), dated July 22, 1946, made under the Town and Country Planning Act, 1944 s. 60 (3).

35A. Licensing Planning Regulations, 1946 (S. R. & O., 1946, No. 1377), dated August 10, 1946, made under the Licensing Planning (Temporary Provisions) Act, 1946 (9 & 10 Geo. 6, c. 53), s. 3 (1).

36. Acquisition of Land (Compensation for War Damaged Land) (Costs) Rules, 1946 (S. R. & O., 1946, No. 1450), dated August 22, 1946, made under the Town and Country Planning Act, 1944, Sched. VIII and the Acquisition of Land (Compensation for War Damaged Land) Rules, 1945 (S. R. & O., 1945, No. 1216), Sched. I.

37. Town and Country Planning General (Interim Development) Direction, 1946 (S. R. & O., 1946, No. 1585), dated September 30, 1946, made under the Town and Country Planning (Interim Development) Act, 1943, s. 6 (2).

38. Town and Country Planning (General Interim Development) Order, 1946 (S. R. & O., 1946, No. 1621), dated October 7, 1946, made under the Town and Country Planning Act, 1932, s. 10, as amended by the Town and Country Planning (Interim Development) Act, 1943, and the Town and Country Planning Act, 1944. Amended by the Town and Country Planning (General Interim Development) Varying Order, 1947, and the Town and Country Planning (General Interim Development) Varying Order (No. 2), 1947.

39. New Towns Act, 1946 (Registration of Orders) Rules, 1946 (S. R. & O., 1946, No. 1896), dated November 6, 1946, made under the Town and Country Planning Act, 1944, s. 17, the New Towns Act, 1946, and the Land Charges Act, 1925, s. 15.

40. Town and Country Planning (Airfields) (Interim Development) Direction (No. 2), 1946 (S. R. & O., 1946, No. 2138), dated December 16, 1946, made under the Town and Country Planning (Interim Development) Act, 1943, s. 6 (2), as amended by the Town and Country Planning Act, 1944, s. 31 (2).

41. Compulsory Purchase of Land Amendment Regulations, 1947 (S. R. & O., 1947, No. 121), dated January 23, 1947, made under the Acquisition of Land (Authorisation Procedure) Act, 1946, Sched. I.

42. Acquisition of Land (Rate of Interest on Entry) Regulations, 1947, dated April 28, 1947 (S. R. & O., 1947,

No. 791), dated April 28, 1947, made under the Town and Country Planning Act, 1944, s. 62.

43. Town and Country Planning (General Interim Development) Varying Provisional Order (B. 1596), dated June 3, 1947, made under the Town and Country Planning Act, 1932, s. 10, as amended.

44. New Towns Compulsory Purchase (Contemporaneous Procedure) Regulations, 1947 (S. R. & O., 1947, No. 1353), dated July 1, 1947, made under the Town and Country Planning Act, 1944, Sched. II, para. 6, as applied by the New Towns Act, 1946.

45. New Towns (Particulars and Forms and Notices) Regulations, 1947 (S. R. & O., 1947, No. 1354), dated July 1, 1947, made under the New Towns Act, 1946, s. 19, and the Town and Country Planning Act, 1944, s. 63.

46. Central Land Board Regulations, 1947 (S. R. & O., 1947, No. 2294), dated October 28, 1947, made under the Town and Country Planning Act, 1947, s. 2.

47. Town and Country Planning (Authorisation of Delegation) Regulations, 1947 (S. R. & O., 1947, No. 2499), dated November 21, 1947, made under the Town and Country Planning Act, 1947, s. 34.

48. Town and Country Planning (General Interim Development) Varying Order No. 2, 1947 (S. R. & O., 1947, No. 2708), dated December 18, 1947, made under the Town and Country Planning Act, 1932, s. 10, as amended.

49. Acquisition of Land (Claims for Adjustment of Compensation for War-Damaged Land) Regulations, 1948 (SI 1948, No. 207), made under the Town and Country Planning Act, 1947, Sched. VII, para. 1 (2); came into operation on February 11, 1948.

50. Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations, 1948 (SI 1948, No. 401), made under the Town and Country Planning Act, 1944, s. 28; came into operation on March 15, 1948.

Private Rights and Ministerial Action

By T. A. Blanco White, Barrister-at-Law

I. General Principles on which the Courts Intervene.
II. Opposition to Planning.
III. Opposition to Compulsory Purchase.
IV. Development of one's Own Land.
V. Disputes about Compensation.

I. General Principles on which the Courts Intervene

1. The purpose of these articles is to explain, in relation to the new planning law and kindred matters, the extent to which an owner of land has an enforceable legal remedy against actions of Government Departments and local authorities that affect his land. The present article deals with the general principles governing the attitude of Courts of law towards such questions; later ones will consider the application of those principles to disputes that may arise at different stages of planning.

In effect, these articles set out to remind readers of the answer to this question: If an owner of land (or anyone else, for that matter) objects to some official planning activity, and has failed to persuade the authority concerned to abandon or change its intentions, in what circumstances can the objection be enforced in a Court of law?

2. It must be understood at the outset that opportunities for judicial intervention are few, and usually occur almost by accident. The fundamental principle of English administrative law is that departmental policy is a matter for Parliament, and the Courts will not interfere in it. Thus the Courts will not arrogate to themselves a power to hear appeals "on the merits" from a decision of a Ministry, and it is rare to find such an appeal provided by statute. The usual statutory provision is that the Court may intervene if the order made by the Ministry "is not within the powers of this Act" or if "the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement of this Act", or words to that effect. Whether the decision was the

best or a correct decision will be irrelevant, provided it was within the Minister's powers; that is to say, provided the Ministry are doing the sort of thing Parliament meant them to do. If they are, the Courts can only intervene if the Ministry have made some formal error. It follows that apart from rare cases raising major questions as to the scope of the Minister's statutory powers, the real dispute between landowner and Ministry will very seldom come before the Court: if the Ministry's order is quashed this will be because of some technicality, often a trivial one, while the real dispute will centre around questions of departmental policy with which the Court is not concerned. This concentration of litigation around side issues is one of the most unsatisfactory features of our administrative law. To the practitioner, it means that the substantial justice of his client's case loses almost all its importance as soon as recourse to the Courts is contemplated.

3. Where questions of policy are not involved appeal is often possible on the merits of a case, if not to the Courts at least to a tribunal independent of the Minister: examples of this will be discussed in later articles, in connection with amenities and with compensation. Where a Ministry or local authority wish to enforce penalties laid down by a statute, too, the matter will almost always have to come before a Court; but it will seldom be possible at that stage to canvass the merits of the original dispute.

4. The extent to which major questions as to the scope of ministerial powers can be brought before the Courts depends primarily on the way the statutes concerned are drafted. It used to be common for statutes to define this scope in some detail, thus leaving a considerable field open for judicial control. In these days, however, at least where planning is concerned, the normal practice is to define all powers in the broadest possible terms. In particular, the circumstances in which a Minister is empowered to take action are frequently defined in some such terms as "if it appears expedient in the interests of proper planning", which so far as the Courts are concerned means "he can if he likes". In this connection it should be noted that such words as "where the Minister is satisfied that it is requisite", which might appear to put more definite limitations on the Minister's powers, give an equally wide discretion: see *Robinson* v. *Minister of Town and Country Planning*, [1947] L. J. R. 1285, C. A., where this point is discussed. It may be noted that the case turned on the enabling words in s. 1 (1) of the Town and Country

Planning Act of 1944; characteristically the 1947 Act (s. 5 (2) (*c*) (i), (3)) is phrased even more broadly.

5. Where procedural requirements are concerned, the language of statutes is normally more definite. Even so, it should be remembered that the Courts have long taken the view that Government Departments are entitled to lay down their own procedure, which may well be informal, so long as the statute is somehow complied with. A recent instance of this is to be found in the case of *Rollo* v. *Minister of Town and Country Planning*, [1948] 1 All E. R. 13, C. A., in connection with a requirement of " consultation " with local authorities in the New Towns Act, 1946: it was held that so long as the authorities concerned were informed of what was going on and had an opportunity for comment, there was " consultation " within the meaning of the statute.

6. On the other hand, where a statute does define the conditions under which powers become exercisable in terms of facts and not of ministerial opinions, the Court will consider whether those factual conditions are complied with, notwithstanding that the Minister's own conclusions as to those facts may form part of a decision which is not appealable. A typical case on this point is *White and Collins* v. *Minister of Health*, [1939] 2 K. B. 838, where a compulsory purchase order under the Housing Act, 1936, was quashed on the ground that the land concerned was part of a park and so protected by s. 75 from compulsory purchase, although the Ministry had found as a fact that it was not part of any park. Section 75 has since been repealed, but a similar point might for instance arise as to whether land included a " dwelling-house " and so was exempt from the accelerated compulsory purchase procedure of s. 2 and Sch. 3 of the Acquisition of Land (Authorisation Procedure) Act, 1946. This type of case is apt to be difficult, for it is not always easy to be certain whether a particular objection goes to the power of the Minister to make an order or not. In *White and Collins* it did; a good example of a case on the other side of the line is *R*. v. *Minister of Health*, [1939] 1 K. B. 232.

7. There are a number of cases in the books in which the Courts have held invalid an exercise of ministerial powers, in a particular way, for an ulterior purpose—in the sense of a purpose not contemplated by the enabling statute. Such authorities will, however, seldom be of value in relation to planning matters. Provided that the Ministry or local planning authority concerned has a discretion, exercisable on

grounds of policy, to use its powers or not—which will almost always be found to be so—it is unlikely that a Court will be prepared to go into the propriety of the policy considerations applied in any particular case. See, for instance, *R.* v. *East Kesteven R. D. C.*, [1947] 1 All E. R. 310, where the local authority refused permission (under the 1944 Act) for the development of certain agricultural land as a stadium, on the ground that the land was needed for food production. They had power to keep the land as agricultural land, and the nature of the policy that led them to exercise that power was held not to be a matter for the Court. It is of course clear law that the Courts have power to quash a purported exercise of a discretion if it was exercised so unreasonably that it cannot be said to have been exercised at all; the difficulty is to establish facts on which a Court can find in any particular case that there cannot possibly have been reasonable grounds for whatever action is being challenged. See, for example, the discussion of this point in the judgment of the Master of the Rolls in *Associated Provincial Picture Houses* v. *Wednesbury Corporation*, [1948] 1 K. B. 223, a case about Sunday cinemas.

This last type of objection is most likely to be of importance in cases where some permission or licence is given subject to unusual conditions: for the very enunciation of the conditions provides an indication of the objects of the authority concerned, and so greatly reduces the burden of proof upon the objector. This was the position in the *Wednesbury Cinemas Case* cited above. Even so, the objection will seldom succeed.

8. Theoretically, it is possible to get certain sorts of ministerial decision quashed on the ground of failure to comply with the requirements of "natural justice": that is to say, on the ground that the Minister was required to act as a judge, that he did not act as a fair and honest judge, and that consequently his decision is a nullity. Such an objection has all the apparent advantages, and all the real disadvantages, of a plea of fraud in an ordinary action. It will practically never succeed: this has been conclusively proved, at great expense to themselves, by three successive generations of landowners. A detailed analysis of the cases has been published elsewhere (see *The Conveyancer* (N.S.), Vol. 11, p. 244 and Vol. 12, p. 91); only the more important points will be mentioned here. In the first place, the scope of the doctrine is limited: it is only applicable when, and in so far as, the Minister is acting in a quasi-judicial capacity, deciding

some sort of dispute between parties. Thus it is not applicable where the Minister is considering objections to action he himself has initiated, for there are then no parties between whom he has to decide. Nor is it normally applicable to the Minister's final decision as to what order he shall make, or the consideration that leads up to that final decision : in considering objections by a landowner to a local planning authority's proposed order a Minister will be acting quasi-judicially, but once he has reached a conclusion on the objections he must be guided in making his order (to some extent at least) by considerations of policy, and in matters of policy the Courts have no control.

Secondly, it must be remembered that actual unfairness or dishonesty on the part of the officials concerned is always extremely hard to prove. Only twice has such an attack succeeded. In one case (*Errington* v. *Minister of Health*, [1935] 1 K. B. 249) the Ministry, deciding a Housing Act dispute between a landowner and a local authority, held private discussions about the case with the local authority behind the landowner's back, after the local public inquiry was closed. In the other (*Stafford* v. *Minister of Health*, [1946] K. B. 621) the Minister was held to have rejected objections to a compulsory purchase order without allowing the objector to state his case, though he allowed the local authority to state their case. Such incidents are rare, and it is rarer still for proof to be obtainable. Nor are these cases now entirely applicable where the Minister is considering objections to a local planning authority's proposed development plan : s. 10 (3) of the 1947 Act allows the Minister in such cases to do just what was done in *Errington* v. *Minister of Health*, *supra*.

SUMMARY

9. The position may consequently be summarised as follows :

(1) It is a valid objection to ministerial action that there was no power to take it. The objection is, however, only a practical one where the powers concerned are limited by reference to facts and not merely to the opinion of the authority taking the action.

(2) It is normally a valid objection that some procedural requirement has not been complied with ; informal compliance is, however, probably adequate.

(3) Where the authority concerned makes it clear that

action has been taken on grounds that are entirely unreasonable, or for purposes totally unconnected with the objects of the enabling statute, the Courts may hold that action invalid.

(4) A Minister who has to decide a dispute between opposing parties must decide it honestly and fairly, after giving both sides an opportunity to present their case; but once the dispute itself has been decided upon, he recovers his usual discretion to use his powers as he thinks fit after considering any material that may be available to him.

It will be seen that attempts to influence Government Departments and local planning authorities must usually be made otherwise than through the Courts; this is indeed what Parliament intended.

PUZZLE CORNER

No. 1. A, the owner of a garden wall has been served with a notice under s. 26 of the Act of 1947, requiring the removal of the wall. B, an adjoining owner has acquired an easement of support in respect of a vine by A's wall.

B CAN/CANNOT obtain an injunction restraining the removal of the wall?

No. 2. Mr. P–ckl–s, in order to compel the owners of neighbouring land, the Br–df–rd Corporation, to purchase his land, sinks a well on his land and draws off the water which would otherwise percolate by undefined channels to the neighbouring land.

Mr. P–ckl–s, CAN/CANNOT be restrained from so doing?

Valuation and Management

By W. A. Leach, F.R.I.C.S.

I. Development Rights of Owners.
II. Effects of Planning on Management.
III. Development Value — Development Charges — Effect on Property Values.
IV. Compensation for Planning Action other than Development.
V. Valuation for Compulsory Acquisition.
VI. Valuation for Injurious Affection.

I. Development Rights of Owners

1. Generally speaking the basic position under the Town and Country Planning Act, 1947, operating from July 1, 1948, is that no development may be undertaken without (a) planning permission being granted under Part III of the Act, and (b), where the value of the land, with the benefit of the permission, would be greater than without it, a development charge being paid in respect of that benefit under Part VII of the Act. In respect of this abridgment of the rights of owners compensation may be claimed under Part VI. If works have been carried out without planning permission their removal may be required. There is also power to order the discontinuance of any use instituted without permission (s. 23).

2. To the town planner "development" means carrying out works on land or making some fresh use thereof; to the owner and to the surveyor *qua* valuer it spells value. "Development" restrictions as applied by the statute are restrictions of value and call for examination on that footing, both to determine what has been lost and what remains to the owner, and what should be paid for the right to carry out a development of the land.

There are, however, exceptions to the general rule set out in the first paragraph above, and since the value of land depends on what an owner can do with it *without charge and as of right*, our first task is to see what can be done in that way after July 1, 1948.

3. The rights of the owner may be classified in three groups: (a) under s. 12 (2): to develop without charge and

as of right as regards operations and uses excluded from the definition of "development" in s. 12 (1); (b) under the Third Schedule: to develop without charge but subject to planning permission being granted (these rights may in effect be extended by regulations made by the Minister under s. 68 (2) (*b*)); and (c) under s. 13: to develop without specific permission by virtue of the provisions of any development order made under that section but with liability to a development charge being assessed. Further, some developments may be affected by what has occurred during earlier planning control.

No compensation under Part VI can be claimed in respect of anything the owner may do free of charge by virtue of s. 12, the Third Schedule, or the regulations under s. 68. The position in the case of developments affected by earlier planning control will be stated as each case is considered.

GROUP A. WHAT MAY BE DONE WITHOUT CHARGE OR PERMISSION

4. Looking at the Act solely from the point of view of the average owner of land the principal things he may do freely and as of right are:—

(1) Maintenance, alteration or improvement of a building by works affecting only the interior or not materially affecting the exterior appearance thereof (s. 12 (2) (*a*)).

Unless the exterior alterations are trifling the safe course would be to apply under s. 17 for a determination that the work does not constitute development. This application can be coupled with an application for permission, no time being lost if the determination is unfavourable.

(2) The continuation of the existing use on July 1, 1948 (s. 12 (2)).

The right to continue the existing use is to be implied since it is only a material change of use which constitutes development (see (6) below). The existing use may, however, be negatived as contravening earlier planning control (s. 75). The owner will in that event be thrown back on to any use which would be lawful under Part III of the Act (s. 24 (4)). Presumably the unlawful use would rank as a temporary use under s. 12 (5) (*a*). "Use" does not include use for building purposes (s. 119) and building is solely an operation on land.

Under s. 12 (5) land (which term includes buildings (s. 119)) being used on July 1, 1948, for a temporary purpose may be used for its normal purpose ignoring any purpose begun inconsistently with earlier planning control : land unoccupied for the whole period from January 7, 1937 to July 1, 1948, has no existing use, and its only use value is for purposes of agriculture or forestry which is always allowed (see (4) below).

Land vacant on July 1, 1948, but occupied since January 7, 1937, may be used for the purpose for which it was last used, being a use begun consistently with earlier planning control (it would seem that if there has been no such consistent use since January 7, 1937, the land must rank as having been vacant since that date, thereby having no use value except perhaps for agriculture or forestry (see (9) of Group D)).

A use is consistent with earlier planning control if established (a) before the land became subject to interim development control, (b) with interim development consent under earlier legislation, or (c) in accordance with an operative planning scheme under earlier legislation or consent thereunder.

Land used occasionally for another purpose in addition to its normal use (*e.g.*, a fair or polling station) may be used on similar occasions for that purpose (s. 12 (5) (*b*)).

(3) The use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such (s. 12 (2) (*d*)).

(4) The use of any land and any building occupied therewith for the purposes of agriculture or forestry (including afforestation) (s. 12 (2) (*e*)).

Presumably this would include agricultural and forestry "operations" on the land (*e.g.*, ploughing, harvesting, threshing, ensilage) except as provided for in the Third Schedule (see (1) to (5) of Group B below).

It may be implied from s. 4 of the Restriction of Ribbon Development Act, 1935, that access to roads for agricultural purposes may be formed without permission or charge.

(5) Change from a particular use of land or buildings to another particular use in the same class (these

classes are to be specified in regulations to be made by the Minister) (s. 12 (2) (*f*)).

(6) In addition to (5) any change of use which is not a "material" change. This is a question of fact depending on the merits of the particular case for "material" is not defined in the Act. Thus in some localities a change from a doctor's to a dentist's professional residence may be material but not in others. The use of one dwelling-house as two or more dwellings is always a material change (s. 12 (3)) but, if permitted, no development charge is payable (s. 69 (2) (*a*) and Sched. 3, para. 2).

As to waste tips see s. 12 (3) (*b*) and proviso; also definition of "buildings and works" in s. 119 and (9) of Group B below.

GROUP B. WHAT MAY BE DONE WITHOUT CHARGE IF PERMISSION GRANTED

5. The principal things which an owner can do without charge but subject to planning permission being granted are as follows. In these cases compensation may be claimed or (in some cases) a purchase notice served if permission is refused or granted subject to conditions:—

(1) The rebuilding from time to time of any building in existence on any day between January 7, 1937, and July 1, 1948 (Sched. 3, para. 1).

(2) The enlargement of the cubic content of a building being rebuilt as in (1) by not more than 10 per cent. (10 per cent. or 1,750 cu. ft., whichever is the greater in the case of a dwelling-house) (Sched. 3, para. 1).

The enlargement will in normal cases be 10 per cent. of the cubic content of the building on July 1, 1948, but where a building has been erected or enlarged subject to conditions under previous planning control those conditions remain operative (s. 76). Where a building has been erected under a former operative planning scheme to the limits allowed without consent, apparently it gains the right to an additional 10 per cent. Where previously enlarged inconsistently with earlier planning control and no action is taken by the planning authority under s. 75 to require the removal of the additions, there would appear to be a right to a further 10 per cent. Ss. 75 and 76 are further considered in Group D. below.

(3) The enlargement, improvement or other alteration of any building in existence on any day between January 7, 1937 and July 1, 1948, or any building substituted therefor (subject as regards enlargement to the same limitations and rights as in (2)) (Sched. 3, para. 3).

Note that although a building can be rebuilt to the permitted larger cubic content it cannot strictly be improved or altered until it has been rebuilt. An application for permission to rebuild with alterations is therefore an application under paragraphs (1) and (3) of the Third Schedule and the position arising on conditional permission being granted or permission being refused may thereby be complicated. This will be referred to again later.

(4) Building and other operations (excluding dwelling-houses and market garden and nursery ground buildings) for the purposes of agriculture or forestry on land used for that purpose on July 1, 1948 (Sched. 3, para. 4).

(5) The winning and working of minerals (as defined in s. 119) for agricultural purposes, but only on land occupied or held with the agricultural land (Sched. 3, para. 5).

As to mineral workings in general, see s. 81, especially sub-s. (2) (*a*) as to non-liability for development charge for three years.

Note that the winning and working of minerals is an operation, and cannot therefore be continued (where already carried on) on the footing of an existing use.

(6) Use of a dwelling-house as two or more dwellings (Sched. 3, para. 2).

(7) Change from one particular use to another particular use within the same class (classes to be specified in regulations to be made by the Minister) (Sched. 3, para. 6).

Note that the similar regulations under s. 12 (2) may be varied from time to time but those under Sched. 3 will be invariable. The latter will allow changes without development charge but permission will be necessary for the change unless it is also possible under the former regulations or is not "material".

(8) Extension of cubic content of building applied to a

particular use on July 1, 1948, by 10 per cent. of that cubic content, or extension of area of land so applied by 10 per cent. of that area (Sched. 3, para. 7).

Note that this concession is not specified to apply to a building substituted for that existing on July 1, 1948, as in (3) above, but this would seem to be intended. See comments on (2) of Group A above.

(9) Continued deposit of waste from working of minerals on land comprised in a site used for such deposit on July 1, 1948 (Sched. 3, para. 8). See also (6) of Group A above.

(10) Continued display of existing advertisements (to be safeguarded for a period under regulations controlling advertising) (s. 31 (5)).

No regulations have yet been published under s. 69 (2) (*b*) under which specified developments may be exonerated from development charge.

GROUP C. WHAT MAY BE DONE WITHOUT PERMISSION BUT SUBJECT TO ASSESSMENT OF CHARGE

6. No development orders under s. 13 have yet been published. When they are, they will probably be found to be of very little assistance to the ordinary owner.

GROUP D. DEVELOPMENT AFFECTED BY WHAT HAS OCCURRED DURING EARLIER PLANNING CONTROL

7. There are ten cases calling for consideration under this heading.

(1) Works carried out and uses begun before July 1, 1948, in existence on that day, and consistent with earlier planning control.

In these cases permission is deemed to have been granted under Part III of the Act (s. 75). The development may be retained or continued without payment of development charge under Part VII and no claim in respect of such development can therefore be made under Part VI.

(2) Works carried out and uses begun before July 1, 1948, in existence on that day, and carried out subject to conditions of a consent under an operative planning scheme or interim development control.

To these cases Part III of the Act applies as if the conditions had been imposed thereunder (s. 76). The development may be retained or continued without payment of development charge under Part VII and no claim in respect of such development value can therefore be made under Part VI.

(3) "Buildings or works" (see definition of this expression in s. 119) contracted for or commenced before July 1, 1948 but not completed by that date and not contravening earlier planning control (as to unfinished erection or alteration of buildings, see (4) below).

These cases may fall in one or other of two categories:—

(a) if interim development consent granted since July 21, 1943, permission is deemed to have been granted under Part III subject to the like conditions (s. 77) (see (5) below);

(b) if building or works contracted for or commenced before land became subject to planning control or under interim development consent granted before July 22, 1943, or under a planning scheme, or under consent under a planning scheme, a special application to complete the buildings or works may be made under Part III with special rights of compensation if permission is refused or granted subject to conditions (s. 79).

A development charge will be assessable if permission is granted and the development should be considered in relation to the Part VI claim. So far as carried out the buildings or works may fall within (1) or (2) of this group and the development charge should be estimated accordingly.

(4) Erection or alterations of building commenced before July 1, 1948, not completed by that day and not contravening earlier planning or Restriction of Ribbon Development control.

Buildings falling into this category may be completed, permission being deemed to have been granted under Part III subject to the like conditions as in any consent granted under earlier planning control (s. 78). A building erected or altered under these provisions may be used for any purpose for which consent has been granted, and where no use has been prescribed, for any purpose for which the building or building as erected or altered is designed.

No development charge will be payable for such buildings under Part VII and no claim in respect of the relevant development value may be made under Part VI.

(5) Development (*i.e.*, an operation on, or change of use of land) not carried out by July 1, 1948 but authorised by interim development consent granted since July 21, 1943, not being a case falling within (4) above.

Permission is deemed to have been granted under Part III subject to the like conditions (s. 77).

Where consent was also necessary under the Restriction of Ribbon Development Act, 1935, that consent must also have been obtained before July 1, 1948.

Where the consent granted was in prospect of a use for a limited period only, there is power under s. 18 (5) to revert to the normal use ignoring any use begun before July 1, 1948 in contravention of earlier planning control (see (2) of Group A).

A development charge will be assessable in cases falling within this paragraph and this should be borne in mind in making the Part VI claim.

(6) Buildings or works not commenced or contracted for before July 1, 1948 but authorised by consent under planning scheme or by interim development consent before July 22, 1943.

There is no provision for these cases and fresh application must be made under Part III. A development charge will be assessable if permission is granted and the development should be considered in relation to the Part VI claim.

(7) Use authorised by interim development consent since July 21, 1943, but not begun on July 1, 1948 (see (5) above).

(8) Use authorised under planning scheme or by interim development consent before July 22, 1943, but not begun on July 1, 1948.

There is no provision for these cases and fresh application must be made under Part III. A development charge will be assessable if permission is granted and the development should be considered in relation to the Part VI claim.

(9) Developments in existence on July 1, 1948, contravening earlier planning control.

In these cases the local planning authority, acting under s. 75, may serve an enforcement notice (s. 23) within three years of July 1, 1948. Alternatively by s. 75 (4) they may grant permission under s. 18 (1), and if permission is granted no development charge is payable (see s. 75 (7) as to uses; in the case of buildings, etc., as no operation carried out after July 1, 1948, there can be no liability for charge). The implication of this is that an enforcement notice served under the powers of s. 75 must be served for planning reasons and not to secure a development charge for subsequently granting permission. If an enforcement notice is served the land may be used for any purpose for which it could lawfully have been used had the banned development not been carried out (see (2) of Group A above). Regard will be had to the banned development in the Part VI claim.

These provisions do not apply to cases governed by the Building Restrictions (War-Time Contravention) Act, 1946, relative to works carried out and uses begun between September 3, 1939, and March 26, 1946, as to which that Act remains operative. The position thereunder is that the contravention may be validated or removal of the buildings or discontinuance of the use required within five years from March 26, 1946. Conditions imposed on validation operate as conditions under Part III.

(10) Land ripe for development.

Where land is ripe for development and the certificate of the Minister is granted to that effect no development charge is payable under Part VII for the development named in the certificate, and no compensation may be claimed in respect thereof under Part VI. " Ripe " means that the development value ascertained in accordance with Part VI is wholly or mainly attributable at July 1, 1948, to a development (a) for which permission has since been granted under Part III or is deemed to be so granted, and (b) in respect of which a building contract in force on July 1, 1948, was entered into within the period of ten years before January 7, 1947, *or* a bye-law submission or planning application was made within that period.

These provisions are in s. 80, but if permission is refused under Part III the case may fall within s. 79 (see (3) (b) above).

The definitions of " development " (s. 80 (1)), " building contract " (s. 80 (3) (*a*)), " bye-law submission " (s. 80 (3) (*b*)), and " building application " (s. 80 (3) (*c*)) should be noted. There is nothing in the definition of " building contract " to exclude a " building agreement " or " building lease ".

(11) Land subject to agreements under earlier planning control, *i.e.*, to agreements made under s. 34 of the Town and Country Planning Act, 1932 : reference should now be made to paragraphs 10 and 11 of the Tenth Schedule of the 1947 Act.

The general position is that these agreements survive and remain enforceable so far as consistent with the development plan unless rescinded or modified by the prescribed action.

CENTRAL LAND BOARD

Devonshire House, Piccadilly, London, W.1
[Telephone : Mayfair 8866]

Chairman : SIR MALCOLM TRUSTRAM EVE, Bt., M.C., T.D., K.C.

Secretary : SIR W. ROBERT FRASER, K.B.E., C.B.

Dealings with Land under the Planning Acts

By Harold Potter, LL.D., Barrister-at-Law

I. Inquiries Preliminary to Contract.
II. Contracts and Conditions of Sale.
III. Requisitions on Title.
IV. Conveyances on Sale.
V. Provisions in Settlements and Wills.
VI. Provisions in Leases and Mortgages.

I. Inquiries Preliminary to Contract

1. The inquiries which a purchaser may reasonably make prior to contract can be divided into two classes. There are those preliminary inquiries which may assist him to decide the proper value and suitability of the land for the purposes for which he contemplates buying it. These questions are primarily directed to its present and subsequent use, though indirectly other matters may arise. The second class comprises those inquiries necessary to draft an adequate protected contract. In some respects these need not be so exhaustive since examination of title will come after the contract, if that is agreed. What the contract must do is to bind the vendor to sell what the purchaser understands he is buying. The importance of this latter class of preliminary inquiries is to ensure (a) that all the rights and liabilities are adequately described, and (b) that the purchaser, on making a requisition or objection, is not met with the answer that the purchaser is bound because he should have searched: *Re Forsey and Hollebone's Contract*, [1927] 2 Ch. 379.

2. The difference between these two aspects of approach may be shown simply. Inquiries directed to value and suitability will include existing user and capability of development. The inquiries should show how far the existing state of affairs will be continued and to what extent, if any, developments will be possible. (We use here the word "development" in its ordinary and not its planning sense.) Until practice has settled down, and it will probably vary a good deal in different districts, this question of value and

suitability will be largely hypothetical and mere guesswork. The conveyancer is not, as such, concerned with this aspect of the problem. It is his job to see that what the purchaser intended to buy he will get, if it is there to be got, and will set aside the contract if it is not there. At one time these matters all arose after contract except for description, and this was a question of comparing the land with the parcels in the contract. This can no longer be relied upon. So much is registered or open to inspection that a careful purchaser needs to cover himself. The conveyancer must know, for example, what the user of the property is, because the conveyance will apparently have to take this into account, but this the contract will define. He must also *inquire* whether there are unauthorised developments, because, if on investigation of title he discovers that they exist, he may be prejudiced.

3. Probably preliminary inquiries from a conveyancing point of view could be reduced to one pretty general inquiry such as the customary one concerning easements, etc. The objection to this course lies in two reasons: (i) the probability of the non-committal answer "the vendor is not aware of any"; and (ii) the draftsman's mind does not fix on the relevant issues to be inserted in the contract.

4. General inquiries preliminary to contract affecting suitability and value should be made before the contract is drafted, assuming they are made at all. They are essentially matters for estate agents rather than lawyers both from the point of view of question and answer and from the point of view of advising on value and suitability. Hence they do not as such form any part of this article [1] which is concerned with conveyancing, that is to say, with matters of title.

It will take some time for the Courts to determine the effect of non-disclosure of planning matters upon a contract. This is partly due to the way in which they may operate. So, for example, X agreed to sell Greenacre to Y in fee simple. X had, prior to contract, made certain alterations with permission under the existing planning legislation, but this permission was conditional upon the dedication of some of Greenacre for a highway. At the date of contract this condition had not been performed and was overlooked. Two points arise. If discovered prior to completion, can the purchaser insist on dedication by the vendor and then claim an abatement in the price? We think he can, but we do not think that there is any direct authority. If not discovered prior to completion could the purchaser sue on the covenants for title and if so which covenant? This is likely to prove a more thorny problem. At this stage we can only guess and guesses are not always right. Therefore it is desirable to draw the contract tight and supplement the clauses with inquiries so as to have as little ambiguity as possible. It is the function then of searches and requisitions to see that the contract is carried out. It is proposed to deal with contract, requisitions and conveyance in subsequent articles. It is hoped also to deal with relevant provisions in other documents such as leases, mortgages, settlements and wills.

---

[1] Some general inquiries are inserted elsewhere in this issue, but it must not be assumed that observations in this article have exhausted their pertinence.

5. References to the "Appointed Day" in this article refer to the date on which the provisions become operative. The date at present fixed for this purpose is July 1, 1948 (Town and Country Planning Act, 1947 (Appointed Day) Order, 1948 (SI 1948, No. 213)). The following observations are intended to explain the draft preliminary inquiries published at the end of this article. Sometimes it may not be necessary to ask all of them. For example, the conveyancer may be supplied with details of the Development Plan either because he practises in the locality and knows all about it or because the inquiries have been made in negotiating the sale.

(*a*) *Whether Subject to Planning Restrictions*

6. Part II of the Town and Country Planning Act, 1947 (hereinafter called the Act) deals with the imposition of a Development Plan. This is contemplated as being made at the latest by three years from the Appointed Day: s. 5. Prior to the Plan being approved, proposals will be published: s. 10.

Before a Plan exists the land is subject to restriction because no "development" within the meaning of the Act[2] can be made without permission: s. 12 (1). The point of the Plan is not to stop but to control development. For example, it will indicate the kind of development, if any, to which the purchaser may look forward. Again, the property might even fall within an area "designated for compulsory purchase". s. 5 (2), (3). It would not follow that it would be so purchased immediately or at all, but such a property would scarcely be attractive as a permanent home.

---

[2] "Development" is explained in the article at pp. 7, 38. For some purposes it includes development under the Acts replaced by this Act: ss. 77, 78.

A purchaser should, therefore, know if such a Plan exists, or whether proposals for such a Plan exist, though it must be borne in mind that the Plan must be reconsidered every five years and can be altered and varied : s. 6. If no satisfactory answer is obtained from the vendor inquiries of the local authority can be made and provision is made in the Act for the supply of copies : s. 10 (2) (*c*). It will in any event be necessary to search the Plan prior to completion, but it is thought that search before contract would not satisfy this requirement.

(*b*) *Development Permission*

7. Unauthorised "development", which includes failure to comply with conditions in a development permission, may result in an "enforcement notice" served on the owner and occupier of the land for the time being at any time within four years. The notice may require the land to be restored to its condition before the development took place or to carry out the condition : s. 23 (1) (2). The significance of such an inquiry is, therefore, obvious.

Whether failure to disclose such a development would enable a purchaser to avoid the contract we must leave for fuller consideration to another article, but we think that it might. Failure to disclose in the conveyance might be a breach of the covenants for title. These are, therefore, serious matters for the vendor as well as the purchaser and this is especially so where the vendor has never been in occupation. Therefore we do not think that the casual answer "the vendor is not aware of any" with its implicit ambiguity should be accepted by the purchaser. If the vendor is unwilling to accept this responsibility he should specifically contract out of it and it is then for the purchaser to decide whether he will take the risk.

No doubt some practitioners will oppose any reference to development in contract or conveyance, but it is difficult to see how unauthorised development does not go to the root of title. Hence to avoid causes of litigation the matter should be dealt with expressly.

8. In negotiating the contract it is obviously desirable to know whether any planning permissions have been refused. This is not strictly a question on title and we think a vendor after contract would be entitled to refuse to answer. Since the information is of value we think it should be asked. For applications made after the Appointed Day, a register will be kept : s. 14 (5). This will be searched prior to completion

as a safeguard, no doubt, but it remains to be seen whether such a search is strictly necessary as part of the investigation of title. The *section* does not make the registration notice to a purchaser.

(*c*) *Discontinuance of User*

9. The Planning Authority has power to modify the existing use of land by ordering the discontinuance of the user, imposing conditions on the continuance of the existing user, and even requiring the alteration or removal of works or buildings : s. 26. This order requires the confirmation of the Minister and notice of proposal must be served on the owner and occupier : s. 26 (2). Though the order is unlikely to be in existence prior to contract, because contravention involves serious pecuniary penalties as well as entitling the authority to enter and carry it out, proposals may be in existence. Whether failure to disclose such proposals prior to contract would enable the purchaser to avoid the contract is another matter of difficulty. We doubt whether such an order made *after* contract avoids the contract, though it might clearly be a source of embarrassment to the purchaser. Difficult questions may also arise concerning the person liable to meet the expense of such an order between contract and completion.

(*d*) *Preservation of Amenities*

10. Among the miscellaneous powers of Planning Authorities are special provisions for preventing loss of amenities. These include in particular a power to make a " tree preservation order " which prevents interference with existing trees by lopping, cutting, etc., and even for securing the replanting of trees felled : s. 28. There is also a power to prevent the condition of open sites and gardens becoming an injury to the amenity of the neighbourhood : s. 33. These powers affect the condition of the land as the purchaser has seen it, assuming that he has fulfilled his duty of personal inspection : see *Hunt* v. *Luck*, [1902] 1 Ch. 428. For some time to come purchasers will not remember that they cannot, for example, remove trees blocking the light to their windows, if, for the purposes of general amenity, an order has been made requiring them not to be interfered with. Whether such an order is a blot on the title we doubt now that planning is universal. If we are correct in this view it is the more necessary to inquire prior to contract.

(e) *Development Value*

11. The Act deprives all owners of land of all development rights and the land without right to develop is treated as having an " existing use value ". The difference between the value with potential development and without potential development is in some circumstances to be paid or partly paid to the owners of the land on the Appointed Day out of the global sum of £300 million. Claims to share in this global sum vest in the owner of the interest on the Appointed Day. They then become " transmissible by assignment or by operation of law as 'personal property' ": s. 64. Presumably, therefore, the Court would treat these rights as independent from the interest in the land in respect of which they are payable. It is thought that this is not a *necessary* inference from the words of the section, because the right to receive payment vests by virtue of the interest in land. It, therefore, becomes essential to determine whether such a claim has been made and whether the contract is intended to include it. For example, it might well be that personal representatives would rather sell the prospective amount which may not be determined for several years.

This right can be ignored where the value of the property is small because it will not be payable where either (i) it does not exceed £20 per acre, or (ii) it does not exceed one-tenth of the " existing use value " of the land: s. 63. There has also been an official intimation that the global sum will only allow for compensation where development could be expected within a reasonably immediate time after the Appointed Day. On the other hand undeveloped land in a built up area *may* have a very high " development value " for a comparatively small area. If no claim has been made prior to contract it will be necessary to determine by the contract how and by whom the claim is to be made.

12. In exceptional cases future development may be made and the whole development value accrue to the owner of the land: s. 80. This can only occur where a building contract in relation to the development has been made within ten years *prior* to January 7, 1947 or a bye-law submission or building application had been made within that period. In these circumstances a certificate exempting the land from a development charge must be issued by the Minister on application to him within a year of the Appointed Day. This is important only in so far as this right to development is

clearly annexed to the land and it is probably desirable to make it clear in the contract to avoid the possibility of dispute.

(*f*) *Development Charges*

13. Where permission is given to develop after the Appointed Day this may be subject to a development charge: s. 69. This charge may be repayable by instalments charged on the land though it can at any time be discharged: s. 71 (2). The nature of the charge does not appear to be specified by the Act and it may be intended to be in the discretion of the Central Land Board whether or not the charge shall be by way of legal mortgage. What is more, it is by no means clear whether such a charge needs to be registered under the Land Charges Act, 1925, to be effective against a purchaser. At this stage it must be assumed that the charge will always be binding and inquiries should pursue the normal course for charges by way of mortgage, but it should be asked prior to contract, though failure to disclose the charge would probably enable a purchaser to avoid the contract if it was not registered under the Land Charges Act, 1925.

14. Where the charge is the result of an order made by the Central Land Board in respect of development in contravention of the Act the charge must be registered as a Land Charge Class A but the charge will be enforceable by the Board as mortgagees by deed. Characteristically the Act does not say whether or not the mortgage is to be regarded as a legal mortgage.

15. Having regard to the possibilities of registration of the charge as a land charge, and to the fact that prior to contract the names of the persons against whom search should be made is not always known, the questions about development charges require specific and direct answers.

(*g*) *General Inquiry*

16. Although an attempt has been made to be reasonably exhaustive it is too early to be certain in a forecast of all the matters that will arise. For example, there are some restrictive provisions about advertisement display: ss. 31, 32, and about mineral workings: ss. 80, 81; unfinished buildings: s. 78; and requisitioned land: s. 54; which may give rise to complications. Most of these matters will rarely arise on a sale, but unless some general inquiry was made it might be argued that the purchaser was not concerned. We do not

think that this is correct, but we think it clearly indicates the need for a general inquiry. At the same time we would repeat that this general inquiry should not be used as an alternative to more detailed and specific questions.

In conclusion we would observe that it took the Courts more than one hundred years to work out the general implications of the Statute of Uses. One of the most fundamental rules of its application, namely the rule in *Purefoy* v. *Rogers* ((1671), 2 Wms. Saund. 380), was not laid down until 135 years had elapsed. Such an elementary question as whether a sole surviving joint tenant still holds on trust for sale under section 36 of the Law of Property Act, 1925, was decided a week or two ago (*Re Cook*, *Beck* v. *Grant*, [1948] W. N. 55; 64 T. L. R. 97; [1948] 1 All E. R. 231), more than twenty years after the Act came into force and there are many similar problems still unsolved. We mention these well-known facts because in our opinion this new legislation is not less far reaching and we have had only a few weeks amid pressing preoccupations to grasp its implications. Every view expressed and all action taken must be tentative and require revision as the implications unfold themselves. In the meantime it is well to err on the side of over caution and draw contracts strictly and even elaborately. These preliminary inquiries should be directed to this end.

PLANNING ASSOCIATIONS

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Town and Country Planning Association, 28 King Street, Covent Garden, London, W.C.2 [Telephone : Temple Bar 5006].

Council for the Preservation of Rural England, 4 Hobart Place, London, S.W.1 [Telephone : Sloane 4280].

Forms of Inquiry

It is obviously possible to telescope some of the inquiries hereunder into a more general inquiry, but it is thought that to set the inquiries out separately has the advantage of causing the parties to address their minds to the various possibilities —to their subsequent mutual advantage.

It does not follow from the fact that an inquiry is set out hereunder that it should be put to the vendor. There may be other and better ways of finding out what is wanted. Conversely, the fact that the question has been put and answered does not absolve the purchaser's advisers from the duty of checking the answers by making the necessary inquiries elsewhere.

I. INQUIRIES AS TO VALUE AND SUITABILITY IN NEGOTIATING SALES

Inquiries from Local Planning Authority

1. Particulars of the Development Plan, if there is one. [*Note.*—Copies are obtainable under s. 14.]
2. If no Development Plan, are any proposals being made?
3. If a Development Plan, has any land been designated for compulsory acquisition?

Inquiries from Local Land Charges Registry

1. Has any notice of any charge or other incumbrance or restriction been registered under the Town and Country Planning Act, 1947?
2. Has any town planning scheme or resolution to adopt or prepare such a scheme or any prohibition or restriction under any instrument or scheme made in pursuance of any Town Planning Act been registered as a local land charge?

Inquiries from the Vendor

A. *Questions which may be asked before July* 1, 1948 [1]

1. Is the land to be sold substantially in the same state now as it was on July 22, 1943? [2]

---

[1] July 1, 1948, is of course the Appointed Day for the coming into operation of the Town and Country Planning Act, 1947. For inquiries to be made after that date see below.

[2] This date is chosen for convenience. It is the date of the passing of the Town and Country Planning (Interim Development) Act, 1943.

2. If any works have been carried out on the land since that date are they in conformity with planning control? A copy of any planning permission is requested.[3]
3. What is the present user of the land?
4. Has any change taken place in the user since July 22, 1943.[2] If yes, is the present user in conformity with planning control? A copy of any planning permission is requested.
5. Has any agreement been made under s. 34 of the Town and Country Planning Act, 1932, restricting or regulating the development or use of the land? If yes, please supply particulars.[4]

pp [illegible]

B. *Questions which may be asked after July* 1, 1948

1. To what extent is the land to be sold affected by any Development Plan or proposals for a Development Plan?[5]
2. Has the land been included in any scheme (whether operative or draft) made under s. 10 of the Town and Country Planning Act, 1932?[6]
3. Did the land exist in its present state on July 1, 1948?[7]
4. (i) Was the land as it existed on July 1, 1948, in conformity with previous planning control?
   (ii) Was any condition as to time or otherwise attached to the land? If yes, please supply a copy.
5. What was the user of the land on July 1, 1948?[7]
6. (i) Was the user of the land on July 1, 1948, in conformity with previous planning control?

---

[3] Planning contraventions existing on July 1, 1948, may be the subject of enforcement orders under s. 75 of the Act of 1947, unless regularised under s. 18.

[4] These agreements continue in force after July 1, 1948: Act of 1947, Sched. X, para. 10.

[5] See s. 5. This question may be put to the vendor but the answer should be verified by separate inquiry at the offices of the local planning authority.

[6] See the preceding note. All schemes under the 1932 Act lapse on July 1, 1948, with the repeal of the 1932 Act, although certain provisions in operative schemes (relating *inter alia* to tree preservation and advertisement control) are preserved by the 1947 Act, Sched. X, paras. 7, 8. But a purchaser should give himself the advantage of considering what was done under previous planning control.

[7] It is of first importance to establish the exact position on July 1, 1948, and from that to ascertain whether any planning contravention existed on that date and whether any planning contravention has occurred since.

(ii) Was any condition as to time or otherwise attached to the user of the land? If yes, please supply a copy.

7. (i) Has any enforcement notice been served under ss. 75 and 23 of the Act of 1947, in relation to the land?

(ii) Has any permission for the retention of any works or buildings or the continuance of any use been given under s. 18 of that Act? If yes, in either case, please supply copies.

8. Has any development within the meaning of the Town and Country Planning Act, 1947, taken place on the land since July 1, 1948? If yes, please supply a copy of the permission to develop.[8]

9. Has any agreement been made under s. 25 of the Town and Country Planning Act, 1947, restricting or regulating the development or use of the land? If yes, please supply particulars.

II. INQUIRIES PRELIMINARY TO CONTRACT[9]

1. Has a Development Plan been issued which includes the land to be sold? If so, is the land included in any area designated to be developed or redeveloped?[10]
   If no such plan has been issued has any notice of proposal of such plan been published?[11]

2. Has the land to be sold or any part thereof been designated for compulsory acquisition in a Development Plan?[12]

3. (i) Has any development within the meaning of the Town and Country Planning Act, 1947 taken place on the land to be sold? If so, the permission to develop must be produced and handed over on completion.[13]

---

[8] Section 12; for enforcement see s. 23.

[9] These inquiries relate to contracts entered into after July 1, 1948, and are intended for use with a draft contract drawn on the lines indicated in the form to be included in the next issue.

[10] Section 5: in the early days no doubt no such plans will be issued. When issued the question of being included in a development area may be very important, including the risk of compulsory acquisition.

[11] Section 10 (2).

[12] Section 5 (3); mere designation does not necessarily contemplate immediate acquisition: see s. 9.

[13] Section 12; for enforcement see s. 23.

(ii) If any agreement has been made regulating such development please supply particulars.[14]

(iii) Was any development made prior to July 1, 1948 for which permission was necessary? If so, please supply particulars of the permission granted.

4. Has any application to develop in accordance with the Town and Country Planning Act, 1947 been made or refused? If so, please supply particulars.

5. (i) Is there any order affecting the land to be sold or any part thereof requiring the discontinuance of any user of the land or the removal of any buildings or works in accordance with section 26 of the Town and Country Planning Act, 1947? If so, has such order been complied with?

(ii) Has notice of any proposal for such an order been served on the vendor? [15]

6. Is the land or any part thereof affected by any "tree preservation order"? [16]

7. Has any notice under s. 33 of the Town and Country Planning Act, 1947, been served by the local authority in respect of the condition of the garden, vacant site or other open land forming part of the land to be sold? [17]

8. Has any application been made in respect of development value under s. 58 of the Town and Country Planning Act, 1947? Is the benefit of such claim included in the sale of the land? [18]

9. Was any building contract, bye-law submission or building permission in force in respect of the land on the appointed day and has any application been made to the Minister for a certificate that the land was ripe for development before the appointed day? [19]

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[14] Section 25: such an agreement is apparently enforceable as a form of restrictive covenant against persons deriving title under the original party to the agreement.

[15] If such an order has been made the purchaser should inquire about compensation: see s. 27.

[16] Section 28.

[17] This notice is for abating injury to amenity. It is important where the land has open sites in an urban area.

[18] The right to claim is vested in the owner on the appointed day: s. 64. Such right can be assigned, but this will involve the vendor. In the early stages no doubt there will be some doubt about the normal practice. The claims for development value will only be important where the land is nearly ripe for development.

[19] See s. 80: this inquiry can only apply to building land, but the application for certificate to avoid development charge must be made within twelve months of the appointed day.

10. Is the land subject to any Development Charge under the Town and Country Planning Act, 1947? If so, please supply particulars.[20]

11. Is the vendor aware of any other order, notice, act, matter or thing made, done or omitted under the Town and Country Planning Acts affecting the land to be sold?

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[20] Section 69: the development charge may be repayable in a lump sum, when it is not likely to affect a purchaser, or by instalments, when it may.

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"*Planning Law*" Notes

THE reception given to the first number of the *Journal of Planning Law* has been most encouraging. The best unsolicited testimonial read: " We received your invoices in respect of *two* subscriptions. It would seem that there has been a little confusion in your office because we received *four* copies. Upon reflection *we propose to keep them all* ".

The Minister of Town and Country Planning has issued a second Bulletin of Selected Appeal Decisions, dated December, 1947, and these are summarised at p. 79, *post.*

Applications for planning permission after July 1, 1948, and in respect of development charges are to be made as prescribed by the Town and Country Planning (Making of Applications) Regulations, 1948; see p. 82, *post.*

The Crawley New Town Sewerage Order, 1948 (SI 1948, No. 677) has been made.

The expression " industrial building " in relation to a scheme made under the Town and Country Planning Act, 1932, has been construed by the Court of Appeal and has been held to include premises in which the occupier carried on the work of making and breaking up concrete blocks for the purpose of investigating and testing the suitability of materials and of reporting thereon to his clients: *Hendon Corporation* v. *Stanger*, [1948] W. N. 79; 64 T. L. R. 164; 92 S. J. 153; [1948] 1 All E. R. 377.

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Control of Land Use

By Desmond Heap, LL.M., L.M.T.P.I.,

Comptroller and Solicitor to the Corporation of the City of London

I. Planning Law and the Meaning of "Development" (*ante*, p. 7).
II. **Planning Law and Development Permission.**
III. Planning Restrictions and the Recovery of Compensation.
IV. Planning and the Designation, Development and Disposal of Land by Local Authorities.
V. Planning Control and its Enforcement.
VI. Planning and the Preservation of Trees, Special Buildings and Amenities.

II. Planning Law and Development Permission

1. Once a developer has satisfied himself that that which he proposes to do constitutes development under the Town and Country Planning Act, 1947 (a matter which was discussed in the previous article in this series) he will bear in mind that it will be unlawful for him to undertake such development after July 1, 1948 (the appointed day under the Act) except with planning permission under Part III of the Act (s. 12 (1)). The need to obtain this planning permission is entirely comparable with the need at the present time to obtain, before commencing any development in an area not covered by an operative planning scheme, interim development permission therefor from the appropriate interim development authority. After July 1 next there will be no such thing as *interim* development although there will then be created a state of what may be termed perpetual interim development in view of the fact that all development after that date will require planning permission whether it is undertaken before or after the coming into operation of a development plan. The Town and Country Planning (General Interim Development) Order, 1946, will come to an end on July 1 next but the Minister is bound under the new Act to make an Order (s. 13 (1)), to be called a Development Order (s. 13 (2)), which will be comparable with the aforementioned General Interim Development Order of 1946 with which developers are now familiar.

2. The new Development Order may itself authorise the carrying out of specified development or classes of development (s. 13 (1) (*a*)). Permission for any such development will,

accordingly, derive directly from the Development Order itself and there will be no need for a developer undertaking this kind of development to make any application for planning permission in respect thereof.

In so far as the Development Order does not itself expressly authorise the development, a developer will have to make formal application for planning permission for his proposed development (s. 13 (1) (*b*)). Such an application will be made to the local planning authority and details as to the method of applying for planning permission are now contained in regulation 2 of the Town and Country Planning (Making of Applications) Regulations, 1948 (SI 1948, No. 711). The application is to be made on a form issued by the local planning authority and obtainable from that authority or from the council with whom the application is to be lodged. In the case of land in the City of London the application is to be lodged with the common council of the City, and in the case of other land in the administrative County of London, with the London County Council. Where the land is not in the London area the application is to be lodged with the county borough council or with the county district council for the area where the land is situated. It will be the duty of the council with whom the application is lodged to transmit it (where necessary) to the local planning authority to whom it is made.

The application is to include such particulars and to be accompanied by such plans and drawings, together with such additional copies (not exceeding three) of the application, plans and drawings, as may be required by the directions printed on the application form, but it will not be necessary to furnish plans and drawings, other than a plan sufficient to identify the land to which the application relates, in any case where the proposed development is, for the purposes of the local planning authority, sufficiently described in the particulars together with that plan.

3. In connection with the need to obtain planning permission under the new Act for all development, it is necessary to stress again that a developer must not lose sight of the fact that the code of planning law and the code of public health law still run their separate courses side by side and, accordingly, in addition to whatever planning permission it is necessary to obtain under the new planning law before development is undertaken, it still remains necessary for a developer to obtain, under the existing public health law and its associated building byelaws, the approval of the appropriate

byelaw authority to the plans of any buildings involved in his proposed development. Indeed, after July 1, 1948 a developer undertaking development in respect of which planning permission is not given by the aforementioned new Development Order (see para. 2 above) will have to make three applications, as follows:—

(1) Under planning law to the local planning authority (or their delegate) for planning permission (s. 12 (1));
(2) Under public health law to the local byelaw authority for approval of the plans of any buildings involved in the development; and
(3) Under planning law to the Central Land Board for determination of the amount of the development charge (if any) payable in respect of the development (ss. 69 and 70; and see also regulation 3 of the Town and Country Planning (Making of Applications) Regulations, 1948 (SI 1948, No. 711)).

4. In addition to the three applications above mentioned, developers must also remember that if their development comprises the erection of an industrial building of more than 5,000 square feet and of any class prescribed by regulations made by the Board of Trade, the Certificate of the Board that the erection of the industrial building can be carried out consistently with the proper distribution of industry must also be obtained (s. 14 (4)). The expression "industrial building" has (s. 119 (1)) the meaning given to it in the Distribution of Industry Act, 1945, under s. 9 of which the Board of Trade will continue to advise on the distribution of industry until July 1, 1948, when the Board's powers under the said s. 9 will cease (by the repeal of that section on that date) and its new power of controlling the location of industry will become exercisable under s. 14 (4) of the Town and Country Planning Act, 1947.

Under the Distribution of Industry Act, 1945, s. 15, "industrial building" means a building used or designed or suitable for use for the carrying on of any industrial process, and "industrial process" means any process for or incidental to any of the following purposes, namely,—

(a) the making of any article or of part of any article, or
(b) the altering, repairing, ornamenting, finishing, cleaning, washing, packing or canning, or adapting for sale, or breaking up or demolition, of any article, or
(c) without prejudice to the foregoing paragraphs, the getting, dressing or preparation for sale of minerals or the extraction or preparation for sale of oil or brine,

being a process carried on in the course of trade or business, and for the purposes of this definition the expression " article " means an article of any description, including a ship or vessel.

The expression " industrial building " in relation to a planning scheme made under the Town and Country Planning Act, 1932, was considered in *Hendon Corporation* v. *Stanger*, [1948] 1 All E. R. 377 (see *ante*, p. 62).

There is no appeal from a decision of the Board of Trade declining a Certificate under s. 14 (4) of the Act of 1947. The application for the Board's Certificate should be made before any application for planning permission for the industrial building is made to the local planning authority because any such latter application is of no effect unless a copy of the Certificate granted by the Board of Trade is furnished to the local planning authority along with the application for planning permission (s. 14 (4)).

5. In dealing with applications for planning permission a local planning authority must have regard to the material provisions of its development plan but is not confined solely to the plan and may have regard to any other material considerations (s. 14 (1)). Moreover, the local planning authority may be authorised either by a Development Order made by the Minister under s. 13 of the new Act, or by directions given by the Minister under any such Order, to ignore, in such cases and subject to such conditions as may be prescribed by the Development Order or by the directions aforesaid, the provisions of its development plan and grant permission for development which is contrary thereto (s. 14 (3) (*b*)).

On receipt of an application for planning permission a local planning authority may—

(a) grant permission unconditionally, or

(b) grant permission subject to conditions, or

(c) refuse permission (s. 14 (1)).

If the authority does not give a decision within a limited period (yet to be prescribed in a Development Order) it will be deemed to have refused planning permission (s. 16 (3)). A register of the authority's decisions is to be kept and to be open for public inspection (s. 14 (5)). Compensation is payable in a limited number of cases on a refusal of planning permission or on the grant thereof subject to conditions, but the matter of compensation falls to be dealt with in the next article in this series.

6. The Minister continues to have the power, first granted to him under the Town and Country Planning (Interim

Development) Act, 1943, of calling in for decision by himself any application for planning permission which would normally be dealt with by a local planning authority (s. 15 (1)). Whilst a local planning authority in dealing with an application for planning permission can (and generally does) act *ex parte*, the Minister, on the other hand, if he calls in an application for decision by himself must allow both the applicant and the local planning authority concerned, if they so desire it, an opportunity of appearing before, and being heard by, his representative (s. 15 (2)).

7. It will be of special interest to developers to note that a local planning authority or the Minister, in granting planning permission for development may impose conditions regulating the development not only of the land which is the subject of the actual application for planning permission, but also of other land under the control of the applicant (s. 14 (2) (*a*)).

8. Permission for development once granted will enure (unless revoked or modified or unless the permission itself otherwise provides) for the benefit of the land, and of all persons for the time being interested in the land, in respect of which it was originally granted (s. 18 (4)) and any person purchasing land may ascertain what permissions for development have been granted in respect of the land by making the appropriate search in the local register of planning decisions to be kept by the local planning authority under s. 14 (5) of the Act, any such search being additional to the usual conveyancing searches made in the registers of local land charges kept under the Land Charges Act, 1925.

9. The developer who is aggrieved by either a refusal of planning permission or by the grant thereof subject to conditions can appeal to the Minister within twenty-eight days from the receipt of the decision (s. 16 (1)) and the Minister may allow or dismiss the appeal or may reverse or vary *any* part of the local planning authority's decision (s. 16 (2)). It is provided that "the decision of the Minister . . . shall be final" (ss. 16 (2) and 15 (3)) but notwithstanding the provisions of s. 15 (3) of the Act an aggrieved developer may yet challenge the Minister's decision by making the appropriate application to the High Court by motion for an order of *certiorari* to be directed to the Minister to bring up and quash his decision. Application may be made at the same time for an order of *mandamus* also to be directed to the Minister. In *R.* v. *East Kesteven Rural District Council, Ex p. Sleaford and District White City Sports Stadium Co.*, 63 T. L. R.

112; [1947] 1 All E. R. 310, the Minister's decision on appeal, upholding the decision of a local planning authority refusing consent to the change of use of certain land from agricultural purposes to that of a sports stadium, was challenged (unsuccessfully) by applications for orders respectively of certiorari and of mandamus to be directed to the Minister. This appears to be the only reported case in which the Minister's decision on an appeal against a refusal of planning permission has been challenged in Court and the decision of the Court, together with other recent decisions of the Courts in comparable matters, gives no encouragement to an aggrieved applicant to challenge a ministerial decision in this fashion. (See further hereon, pp. 34 and 35, *ante*).

Developers should bear in mind that by appealing to the Minister they put before him the whole of their application for planning permission and not merely that part of the local planning authority's decision in respect of which they feel aggrieved. Accordingly, in exercising his right to reverse or vary the local planning authority's decision the Minister may himself add more onerous conditions than were imposed by the local planning authority in the first place. Indeed he may go to the extent of refusing planning permission altogether in a case where, in his view, the local planning authority was wrong in granting the permission.

Some guidance as to the attitude which the Minister might be expected to adopt on appeal being made to him is now obtainable from the Bulletins of Selected Appeal Decisions issued from time to time by the Minister (see, *e.g.*, Bulletin No. 2, December, 1947, summarised on p. 79, *post*).

10. It has already been stated that planning permission once given enures for the benefit of all persons for the time being interested in the land affected (s. 18 (4)) but this, of course, is subject to the right of a local planning authority to revoke or modify a planning permission by means of an Order made by the authority and confirmed by the Minister (ss. 21 and 22). It is to be noted, however, that a local planning authority desirous of revoking or modifying a planning permission previously granted by them must do so either—

(a) before building operations authorised by the permission have been completed, in which case the revocation or modification is not to affect so much of the building operations as have been carried out, or

(b) before any change in use of land authorised by the planning permission has taken place (s. 21 (3)).

Compensation may become payable on revocation or modification of a previous planning permission and this will be dealt with in the next article in this series.

11. In connection with the grant of planning permission for development there are a number of transitional matters under the Act of 1947 which, though they will ultimately become spent by effluxion of time, are nevertheless of importance to many developers at the present time and which, accordingly, require mention here.

Firstly, there are to be considered those planning permissions which derive from operative planning schemes. All planning schemes operating under the provisions of the Town and Country Planning Act, 1932 (or its predecessors), will cease and determine on July 1, 1948, on the repeal as from that date of the Act of 1932 under which such schemes were either made or now continue to function. Thus, any permission for development which has been granted by, or under the provisions of, any such scheme and which permission is still in force immediately before July 1, 1948, will lapse on that date and a fresh application under the Act of 1947 will have to be made in respect of any development authorised by, or under the provisions of, the lapsing planning scheme but not carried out. If application is made not later than January 1, 1949 (*i.e.*, within six months of the appointed day under the Act of 1947), for planning permission in respect of such development and the application is refused, compensation for abortive expenditure may, in certain circumstances, be claimable (s. 79), as will be dealt with in the next article in this series.

Secondly, there are to be considered interim development permissions still in force immediately before the new Act becomes fully operative on July 1, 1948. Here it is important to distinguish between those interim development permissions granted *before* July 22, 1943, and those granted *on or after* that date which is the date when the Town and Country Planning (Interim Development) Act, 1943, came into operation. In the case of an interim development permission granted *before* July 22, 1943, the permission will (like the permissions under operative planning schemes) lapse on July 1, 1948, but a right similar to that referred to in the preceeding paragraph with respect to compensation for abortive expenditure will apply if application for planning permission to replace the lapsing interim development permission is made under the new Act before January 1, 1949 (s. 79).

With respect to interim development permissions granted *on or after* July 22, 1943, the position is different. If such a permission is still in force on July 1, 1948, then in so far as the development authorised by the permission has not been carried out on that date, planning permission in respect thereof is preserved and is deemed to be granted (without the need for the making of any fresh application) under the new Act, provided always that any permission required under the Restriction of Ribbon Development Act, 1935, in connection with the development has also been obtained prior to July 1, 1948 (s. 77).

12. Special mention must be made of *buildings* in course of erection or alteration on July 1, 1948, in pursuance of *any* of the aforementioned transitional types of planning permission, that is to say (a) permissions granted by or under operative planning schemes and (b) interim development permissions whether granted before, on or after July 22, 1943. Permission for the completion of such buildings is deemed to be granted under the Act, provided that any permission required under the Restriction of Ribbon Development Act, 1935, in connection with the buildings has been obtained before July 1, 1948 (s. 78). It should be noted that this particular saving applies only to " unfinished buildings " (to quote the marginal note to s. 78) or, to express the matter more fully, it applies only " where any works for the erection or alteration of a building have been begun but not completed before the appointed day ". Thus, to take an example, interim development permission may have been granted before July 22, 1943, for the development of an estate by the erection of a hundred houses. On July, 1, 1948, forty houses may have been built and completed, ten may be in actual course of erection, and fifty may remain to be commenced. In these circumstances the saving provided in s. 78 of the Act will apply to the ten houses in course of erection on July 1, 1948, but it will not apply to the fifty houses all covered by the original interim development permission but which remain on July 1, 1948, still to be commenced and which, accordingly, cannot be said on that date to be " unfinished buildings " by reason of the fact that they are not yet " commenced buildings " let alone unfinished ones.

Planning as Affecting Interests in and Value of Land

By E. J. Rimmer and J. Stuart Daniel, Barristers-at-Law

I. Main Consequences of the Act of 1947 (*ante*, p. 15).
II. **Compulsory Acquisition.**
III. New Principles of Compensation for Compulsory Acquisition.
IV. Claims upon and Payments out of Central Fund.
V. Development Charges.
VI. Mineral Rights and other Special Cases.

II. Compulsory Acquisition

1. The extended powers of local authorities and statutory undertakers to acquire land under recent legislation and the statutory power given to the Central Land Board to acquire land for disposition to persons willing to develop under the Act of 1947 require special notice in considering the future of interests in and value of land. It cannot but be contemplated that these powers, together with the diminution of compensation payable to owners resulting from the removal of development value from its assessment, will lead to a larger measure of public ownership of land. In this article it is only possible to consider the extensions of compulsory purchase powers introduced by the Act of 1947, and to note the more important amendments made by that Act to the previous legislation.

Designation for Compulsory Purchase

2. In the forefront of the Act of 1947 stand the powers of "designation"—that is, designation of land as subject to compulsory acquisition. The principle of designation is not entirely new. It emerged in the Town and Country Planning Act, 1944, but by that Act it could only be applied to certain limited objects—that is to say, to the dealing with areas of war damage and any consequential relocation of population or industry or replacement of open space. Again, under the New Towns Act, 1946, land within an area designated as the site of a new town under that Act may be compulsorily

acquired. The Act of 1947 carries the principle much further and greatly widens the categories of land which may be designated.

3. By s. 5 of the Act local planning authorities must submit a development plan to the Minister within three years of the appointed day. The plan may designate land under two main heads. In the first place, by s. 5 (2) (*b*) the plan may:

> " designate, as land subject to compulsory acquisition by any Minister, local authority or statutory undertakers, any land allocated by the plan for the purpose of any of their functions (including any land which that Minister or authority or those undertakers are or could be authorised to acquire compulsorily under any enactment other than this Act) ".

If this provision is made full use of the effect should be that *ad hoc* and piecemeal acquisition should be virtually abolished. The intention seems to be that the designation should cover any acquisition contemplated in the ensuing ten years, for by s. 5 (4) (*a*) the likelihood of designated land being acquired within ten years is made one of the tests by which the Minister shall approve or disapprove the plan. It seems probable, therefore, that at the stage when development plans are in preparation, departments, local authorities and undertakers will notify the planning authorities of their foreseeable requirements, and the latter will then be in a position to co-ordinate these in their plan. Ideally, therefore, an owner should at least know when his land is *not* likely to be taken for ten years: but plans may at any time be amended and designation varied under s. 6, so that any certainty is impossible. It is to be hoped, however, that local planning authorities will seek to designate comprehensively, accurately and at widely spread intervals, and that Ministers, authorities and undertakers will endeavour to restrict their purchases to land of which they have previously secured the designation. In this way " planning " and private ownership will both be benefited.

Designation under this head need not be hampered by any consideration of whether or not the existing powers of the Minister, authority or undertaker extend to acquisition of the land in question: if the land is allocated by the plan " for the purpose of any of their functions ", it is then safely on the way to acquisition. In fact, existing powers enabled Ministers, etc., to acquire most of the land which they needed for their functions, but it is clearly possible that land may be allocated, designated and acquired under this provision which could not otherwise be acquired, or for a purpose which was not otherwise authorised. Where, therefore, there are any doubts as to the efficacy of existing powers there will be a considerable incentive to use this procedure.

4. The other head of designation is provided by s. 5 (2) (*c*), which deals with land designated for acquisition by the appropriate local authority (*i.e.*, the council of the county borough or county district in which the land is situated). This type of designation is divided into two parts, the first of which concerns areas of comprehensive development. The development plan may designate as land subject to acquisition by the appropriate local authority (s. 5 (2) (*c*) (i)):

> " any land comprised in an area defined by the plan as an area of comprehensive development (including any land therein which is allocated by the plan for any such purpose as is mentioned in paragraph (*b*) of this subsection), or any land contiguous or adjacent to any such area; "

Section 5 (3) makes it clear that an area of comprehensive development may be any area which the planning authority think should be developed or redeveloped as a whole for any of the following purposes, *viz.*:

(a) Dealing satisfactorily with extensive war damage.
(b) Dealing satisfactorily with conditions of bad lay-out or obsolete development.
(c) Providing the relocation of population, or industry, or replacement of open space in the course of the development or re-development of any other area.
(d) For any other purpose specified in the plan.

The fourth purpose gives an unfettered discretion to planning authorities, subject to approval of the development plan by the Minister. The first three purposes, linking the provisions as they do with earlier legislation, are no doubt intended as indications of what may be done. Sub-s. (3) also provides that land may be included in an area of comprehensive development whether or not provision is made in the plan for the development or re-development of that particular land.

5. Secondly, any other land (*i.e.*, land not in an area of comprehensive development) may be designated for acquisition by the appropriate local authority which " ought to be subject to compulsory acquisition for the purpose of securing its use in the manner proposed by the plan " (s. 5 (2) (*c*)

(ii)). This will enable isolated sites to be earmarked for specific purposes in the interests of planning and designated accordingly. For instance, new roads, road widening, parks or other specified uses of land may be required in an area which does not require to be developed as a whole. These, therefore, would be shown on the development plan and designated accordingly.

Authorisation of Compulsory Acquisition

6. Designation is not, however, in itself an authorisation of compulsory purchase. Indeed, though designation may in the future be expected to be the first stage of compulsory purchase it will not be in all cases a condition precedent. Where, however, designation is adopted as the first stage it may be, as is noted later in this article, that unless an owner takes his objection at this stage (that is, by objecting to the development plan) he will lose all right of having his objection to compulsory purchase heard; and statutory authority owners who take no objection to the designation of their land may lose their rights to have their objections considered by Parliament. While public advertisement of the Development Plan is necessary under s. 10, no individual notices to the owners of land to be designated are required, and some vigilance will therefore be advisable.

7. The authorisation of compulsory acquisition is dealt with in Part IV of the Act of 1947 and the details of this will vary according to the type of designation which has preceded it, depending on whether the designation was under s. 5 (2) (*b*) or s. 5 (2) (*c*). The Acquisition of Land (Authorisation Procedure) Act, 1946, is applied by Part IV of the Act of 1947 but with modifications, again depending on the nature of the original designation.

The Act of 1946 largely unifies the various procedures which previously existed for compulsory acquisition. It provides for the making of compulsory purchase orders by the acquiring authority, for the giving of notices, the hearing of objections, and for the confirmation and coming into effect of the order. It is not within the scope of this article to consider the Act of 1946 in detail, but it must be emphasised that that Act lays down the basic procedure for authorisation, and in dealing with Part IV of the Act of 1947 it is necessary to point out the more important changes in that procedure.

8. If land has been designated under s. 5 (2) (*b*) of the Act of 1947, that is as subject to acquisition by a Minister,

local authority or statutory undertaker, the ensuing authorisation of acquisition will be governed by s. 37 of the Act. If, on the other hand, it has been designated under s. 5 (2) (*c*) for acquisition by the appropriate local authority, then the authorisation will be governed by s. 38. Both sections make clear who in any given case will be the confirming authority. Thus, under s. 37, this will be the acquiring Minister, or the Minister concerned with the relevant functions of the acquiring local authority, or the appropriate Minister for the purposes of the acquiring undertakers; under s. 38 the confirming authority will be the Minister, *i.e.*, the Minister of Town and Country Planning. Both sections provide in certain cases for acquisition before a development plan has become operative. In s. 37 this is confined to land required by the Minister of Works or the Postmaster-General; but by s. 38 councils of county boroughs and county districts may be authorised so to acquire land for any purpose which is immediately necessary in the interests of proper planning, or for the purposes mentioned in s. 10 (1) (*c*) and (*d*) of the Act of 1944. The latter " purposes " are the provision of alternative sites for development which is in the public interest which would otherwise be inconsistent with proper planning, and the provision of accommodation for persons and undertakings displaced by war whose movements would otherwise tend to be similarly inconsistent.

9. There are two important differences between ss. 37 and 38. Authorisation under s. 37 is not made subject to the confirming authority being satisfied on any specific points. On the face of the Act it appears to follow naturally from designation. The danger mentioned above—that an owner may not be able to voice a valid objection at the stage of acquisition—will here, therefore, be particularly prevalent : for by s. 45 the confirming authority is entitled to disregard an objection to a compulsory purchase order which amounts in substance to an objection to the provisions of the development plan defining the proposed use of the land. Under s. 38, on the other hand, the Minister must be satisfied as to various matters before confirming the order. In the case of land included in an area of comprehensive development he must be satisfied that it is required for the development or re-development of the area, or that it is expedient in the public interest that it should be held together with land so required

(s. 38 (1) (*a*)). In any other case, *i.e.*, cases deriving from designation under s. 5 (2) (*c*) (ii), he must be satisfied that the land should be acquired for the purpose of securing its use in the manner proposed by the plan. In such cases there seems to be more scope for objection at this stage, that is, for an objection which is more than an objection to the development plan. In particular it seems that an owner, lessee or occupier might maintain that he himself was able and intended to use the land in the manner proposed by the plan, and that compulsory acquisition was therefore not necessary.

10. The other main difference between ss. 37 and 38 is in the application of the Act of 1946. In s. 37 the application includes s. 2 of that Act, which provides temporary powers of speedy acquisition in certain cases: that is to say that where it is urgently necessary in the public interest that possession of land should be obtained without delay, an authorisation in writing may take the place of a compulsory purchase order. Entry may then be made at any time not earlier than seven days or later than three months after the giving of the authorisation. These powers may only be used during a period of five years from the commencement of the Act of 1946, and they do not apply to certain types of land, the most important of which are land of local authorities or statutory undertakers, and dwelling-houses. The application of the 1946 Act in s. 38 excludes s. 2 and the powers of speedy acquisition will not therefore be available. In cases governed by s. 38, however, powers to expedite completion are specifically conferred by s. 39. By the latter section, when a compulsory purchase order has been submitted under s. 38 the Minister may, if he is asked to do so in the order, direct that the provisions of the Sixth Schedule to the Act of 1944 shall apply. Before doing so he must be satisfied that entry and vesting are urgently necessary before the time required for service of the notices to treat. The Sixth Schedule to the Act of 1944 appears as amended by the Eleventh Schedule to the Act of 1947. Its salient features are that notice to treat will be deemed to have been served on the date when the order for expedited completion (under the Act of 1947—the compulsory purchase order containing the direction) is registered in the register of local land charges; and that the land will vest without a conveyance upon a declaration by the acquiring authority.

11. Under s. 41 county boroughs and districts may be authorised to acquire compulsorily buildings of special architectural or historic interest when it appears that reasonable

steps are not being taken for their preservation. There is an interesting provision in sub-s. (4) which gives a right of application by any person interested in the building to a Court of summary jurisdiction, with a right of appeal to quarter sessions. If the application or appeal is successful further proceedings will be stayed and the matter will never reach the Minister.

12. S. 42 deals with appropriation for planning purposes of land held by local authorities. It need not be considered in detail here, but it should be noted that by sub-s. (3) power is given to acquire land required in substitution for land so appropriated.

13. S. 44 incorporates certain sections of the Town and Country Planning Act, 1944, *i.e.*, ss. 15 and 19–30. This incorporation is subject to the repeals and amendments made by the Act. These may be found in Sched. IX and Sched. VIII respectively, but the simplest method of gathering their effect is by reference to Sched. XI, which very conveniently sets out, as amended, all the unrepealed provisions of the Act of 1944. S. 15 of that Act deals with the acquisition of licensed premises. Ss. 19–30 deal mainly with disposal appropriation and development by local authorities of land held by them for planning purposes, so that their scope is really concerned with events subsequent to acquisition. Some of the provisions are, however, relevant to the main purpose of these articles. For instance, the effect of s. 22 of the 1944 Act, as amended, is that local authorities or persons deriving title under them or under the Central Land Board may build and carry out work on land which has been acquired by the authority or the Board " notwithstanding that it involves interference with any easement or other servitude or breach of any restriction as to the user of the land arising by virtue of any contract ". Again, s. 24, as amended, provides that where a compulsory purchase has been completed under Part IV of the Act of 1947 all private rights of way over the land in question, and rights of constructing or maintaining apparatus under or over the land, will be extinguished. This section may be excluded at the option of the purchasing authority and will not in any case apply to the apparatus of statutory undertakers who are given opportunities of objection under the following section of the 1944 Act.

14. Two points affecting objections are worth noting. Under s. 45 (2) of the Act of 1947 the Minister has power to confirm a compulsory purchase order made under s. 38 as to

part only of the land, and to postpone consideration of the remainder. This course may well be adopted when an objector has made out a case for the acquisition being premature in so far as his land is concerned. There would be administrative advantages in such a method since the local authority would not have to start *de novo* as they would if they wished to revive the matter after the out-and-out exclusion of the land from the order. On the other hand, from the objector's point of view the prolonged uncertainty would inevitably be a disadvantage.

While the private owner has no further remedy after the confirmation of a compulsory purchase order which complies with the requirements of the Act, statutory undertakers and local authorities whose land is sought to be taken have in general, by virtue of the Act of 1946, opportunity to petition Parliament under the special parliamentary procedure provided by the Statutory Orders (Special Procedure) Act, 1945. In the case, however, of land which it is proposed to take consequent on designation by a development plan this opportunity must be taken at the stage of designation (s. 4 (*c*)) and will not be available at the stage of acquisition (s. 45 (3)).

15. S. 46 makes it clear that a development corporation established for the purposes of a new town under the New Towns Act, 1946, may acquire land in an area designated as the site of a new town under that Act whether or not it is proposed to develop or redevelop that particular land.

Purchases by the Central Land Board

16. Finally the powers of acquisition given to the Central Land Board require special consideration. By s. 43 the Board may acquire land by agreement, with the approval of the Minister, for any purpose connected with the performance of their functions, and in particular for the purpose of disposing of it for development (for which permission has been granted under Part III) on terms inclusive of any development charge payable in respect of such development. Failing an agreed acquisition on reasonable terms the Board may be authorised to acquire the land compulsorily. In the case of compulsory acquisition the Act of 1946 is applied as in s. 38, that is to say, the temporary powers of speedy acquisition are excluded, but the Board will have the power to expedite completion under s. 39. The test of "reasonable terms" will presumably be the

amount of compensation which would be awarded on compulsory acquisition. The Board, having acquired land under this section, may manage it under direction by the Minister but may not carry out development. In considering these powers it must be borne in mind that when they are exercised the same body will be both assessing the development charge and disposing of land on terms inclusive of that charge. It may be anticipated that the powers will be used to bring pressure upon owners of land which the Board think should be developed who either will not themselves carry out development or who will not sell at the restricted land value to a person willing to develop. Here is, indeed, the clearest indication that the owner of land is not to be allowed to refuse to make his land available for necessary development merely because there is no future development value in it for himself as owner; and it is upon this section that the Minister may have to rely in order to ensure that development in accordance with the development plan is in fact undertaken by the private developer. Clearly when the Central Land Board have acquired land from the owner at the restricted value (*i.e.*, exclusive of development value) they will add to this value such a development charge as will still leave some inducement to the purchaser from the Board to carry out the development, and will very possibly exact some undertaking from him as to the time in which the building will be completed.

Summary of Bulletin of Selected Appeal Decisions, No. 2

The following is a summary of the Bulletin of Selected Appeal Decisions, No. 2, December, 1947, issued by the Ministry of Town and Country Planning:—

Permission to rebuild a war-damaged factory in a congested area which was zoned as an industrial area was refused as the rebuilding of the factory would prejudice the authority's plans and tend to perpetuate the pre-war state of congestion. (II/1.)

The Minister held that the use of twenty-two acres of rough pasture land (situated on the bank of a small river in a partly rural and partly industrial area) as an open space for the recreational purposes of the local population would result in greater advantage than the use of the land for pony, cycle, dog-racing and field events which was proposed by the appellant. (II/2.)

Permission was refused for the development of a sports stadium (greyhound racing and speedway tracks, swimming pool, tennis courts, etc.) on nine acres of low-lying pasture land in a small undeveloped area between a residential and an industrial area on the grounds (a) that the site was included in an industrial zone, (b) that the resulting crowds and noise of the tracks would prejudicially affect the adjoining residential area, and (c) that the development would lead to serious congestion on the adjoining main road. (II/3.)

Permission was granted for the establishment of a greyhound racing track on a ten acre vacant site (temporarily used as a War Department stores depot) near the centre of a city. (II/4.)

Permission was refused to develop forty-three acres of pasture land as a meeting place for seventy-three amateur motor-cycling clubs for races, hill-climbs and rallies on the grounds (a) that the weekly meetings would raise transport, refreshment and sanitation difficulties, and (b) that the land, which was in agricultural occupation, and situated in an area of scenic attraction, should be included in a landscape zone in which no development interfering with its agricultural use or detracting from its natural amenities should be permitted. (II/5.)

Permission was granted for the repair of the domestic part of premises which consisted of a shop with living accommodation, permission having already been granted for structural repairs to the business part. The whole had been war-damaged and the Minister held that an imposition of a time limit on the development of the domestic part was not justified as permission for the development of the business part had been given without limit of time. (II/6.)

An appeal was allowed against a condition that certain shop premises should not be used for fish-frying. The site was part of a suburban area which it was proposed to zone for general business purposes as a local shopping centre. The Minister held that the proposed development was appropriate, that the fact that permission had been granted for the development of another fish-frying establishment on a neighbouring site did not justify the condition, and that the condition should not be imposed; but that the appeal should be allowed subject to the condition that the fish-frying equipment to be used should be to the satisfaction of the council or himself on appeal. (II/7.)

Permission was granted for the building of two (out of a suggested four) houses for agricultural key workers on a farm holding notwithstanding the unsuitability of the site (separated from the village by two trunk roads unprovided with footpaths) and the fact that there was a village centre at little more than a mile from the site. (II/8.)

An appeal for permission to erect six additional houses for agricultural key workers was dismissed and a permission granted in 1938 for the erection of twenty such houses (only four of which had been completed before the war interrupted the building) was revoked because the site was in open country outside the area intended to be zoned for the natural expansion of the two villages between which it lay and because there were already four houses for key workers and there was no reason why further housing should not be provided within the development area close to the farm. (II/9.)

Permission to develop a site which consisted of a brick boathouse as a station for repairing, hiring and berthing motor-craft, was refused on the grounds that this development would constitute the only interruption over a long stretch of river bank of the public's free access to the river; that oil from the site would pollute the nearby municipal swimming pool; and that there were already adequate facilities of the kind proposed. (II/10.)

Permission was granted to rebuild a war-damaged riverside house which was occupied in connection with the appellant's boat-building business, on the grounds that the business had been established for generations; that the proposed building was unobjectionable; and that while the provision of pleasure boats was one of the public amenities of the river the proposed building would not seriously diminish the riverside space available to the public. (II/11.)

Permission was refused for the development of a builder's yard in a pocket of neglected land enclosed by the gardens of houses which fronted surrounding roads. The appellants owned 300 houses within two miles and 400 to 500 houses within five miles of the site, which was within a residential zone. Permission was refused because of the zoning; because the yard would adversely affect surrounding occupiers and because the yard was an industrial undertaking; the fact that the site was a neglected pocket of land which had been allowed to deteriorate so as to become a nuisance being held not to be a reason for granting permission. (II/12.)

Permission was refused to erect a bungalow on a small piece of surplus land in a residential estate on the ground that the development would constitute an unwarranted intrusion on the amenities of a number of adjacent houses. (II/13.)

The Minister held that it would be a denial of justice to refuse permission for the replacement of an existing bungalow which had not reached the end of its useful life but had been accidentally destroyed by fire, notwithstanding the general unsuitability of the area for further building development. (II/14.)

Permission to convert a modern four-bedroom detached house into two self-contained flats was refused on the ground that the house was suitable for single family occupation and of a type for which there was a considerable demand in the district. (II/15.)

Permission was refused to replace a war-destroyed three storey Victorian house by a block of eight flats on the ground of excessive density. (II/16.)

An appeal was allowed against the imposition of a condition that the developers should convey to the council free of charge a piece of land being part of the estate with respect to which conditional permission for interim development had been granted, on the ground that the condition was *ultra vires*. (II/17.)

Permission was granted to work an existing gravel pit on condition that further excavations were to be restricted in certain directions and that a screen of trees was to be planted to render them as inconspicuous as possible. Permission was also granted for the development of forty acres (out of a proposed 100) as a gravel pit, subject to conditions as to the direction of working and planting of trees. (II/18.)

Permission was refused for an extension of sand working by a brick-making concern in an area proposed to be reserved as an open space, on the ground that there was no immediate threat to the appellants' production of bricks, and that serious damage to amenity would result from an extension of the sand working. (II/19.)

Statutory Instruments

Town and Country Planning (Making of Applications) Regulations, 1948

(SI 1948, No. 711)

Made	*8th April,* 1948
Laid before Parliament	*8th April,* 1948
Coming into Operation	*1st July,* 1948

B 2238

The Minister of Town and Country Planning in exercise of the powers conferred on him by s. 102 (1) and s. 73 (1) of the Town and Country Planning Act, 1947, and all other powers enabling him in that behalf hereby makes the following Regulations :—

Interpretation.

1.—(1) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(2) In these Regulations—

(a) " the Act " means the Town and Country Planning Act, 1947;

(b) " the Board " means the Central Land Board;

(c) the expression " determination of development charge " means a determination of the Board whether any and, if so, what development charge is to be paid under the provisions of Part VII of the Act in respect of the carrying out of any operations or in respect of any use of land to which that Part of the Act applies.

Planning permission.

2.—(1) An application to a local planning authority for planning permission under Part III of the Act shall be made on a form issued by the local planning authority and obtainable from that authority or from the Council with whom the application is to be lodged, and shall include such particulars and shall be accompanied by such plans and drawings, together with such additional number of copies (not exceeding three) of the form and plans and drawings, as may be required by the directions of the local planning authority printed on the form:

Provided that it shall not be necessary to furnish plans and drawings other than a plan sufficient to identify the land to which the application relates, in any case where the proposed development is, for the purposes of the local planning authority, sufficiently described by the particulars together with that plan.

(2) The application shall be lodged—

(i) Where the land in respect of which the application is made is in the administrative County of London—

(a) in the case of land in the City of London, with the Common Council of that City;

(b) in the case of any other land in the said County, with the London County Council.

(ii) Where the land is not in the administrative County of London, with the County Borough Council or the County District Council for the area in which the land is situate

and the authority with whom the application is lodged shall, where necessary, transmit it to the local planning authority to whom it is made.

Development charge.

3.—(1) An application to the Board to determine whether any and, if so, what development charge is to be paid in respect of any operations or use of land shall be made on a form issued by the Board for the purpose and obtainable either from the Board or from any authority with whom an application for planning permission may be lodged under the preceding Regulation.

(2) Such application to the Board shall contain such particulars and shall be accompanied by such plans, drawings and other documents as may be required by any directions of the Board to enable them to determine whether any and, if so, what development charge is to be paid:

Provided that it shall not be necessary to furnish plans and drawings other than a plan sufficient to identify the land to which the application relates, in any case where the proposed development is, for the purposes of the Board, sufficiently described by the particulars together with that plan.

(3) Such application to the Board shall (save as hereinafter provided) be sent to the Board at such address as is indicated in any directions of the Board, or, in the absence of any such indication, to any office of the Board:

Provided that where application for planning permission is required under Part III of the Act, application to the Board may be sent to the authority with whom the application for planning permission is to be lodged under Regulation 2 of these Regulations accompanied by the application for planning permission.

Confirmation of development charge.

4. An application to the Board for the confirmation of a determination of development charge shall be made by letter addressed to the Board at the office from which the determination of development charge was issued giving particulars of the determination in respect of which the application is made and of the circumstances in which confirmation of the determination is required.

Variation of development charge.

5. An application made to the Board to vary the determination of a development charge shall be made on a form issued by the Board for the purpose and obtainable from any office of the Board and shall include full particulars in relation to the following matters :—

(a) The development charge in respect of which the application is made.

(b) The grounds on which the application is made.

(c) Where the application is made by the person entitled to an interest in land to which a determination of development charge relates on the ground that a change of circumstance has taken place since the determination, particulars of such change of circumstance.

(d) Where an application is made on the ground that, after the determination of the amount of the development charge and before that amount has been fully discharged :—

  (i) planning permission for the carrying out of the operations, or for the institution or continuance of the use, to which the determination relates, has been modified by an order made under Section 21 of the Act, particulars of such order;

  (ii) an order has been made under Section 26 of the Act requiring the alteration of any buildings or works erected or constructed in the carrying out of those operations, or imposing conditions on the continuance of that use, particulars of such order;

(iii) any part of the land to which the determination relates has been compulsorily acquired under the Act or any other enactment, particulars of such compulsory acquisition.

(e) The manner in which the applicant desires that the determination to which the application relates should be varied.

(f) The manner in which the applicant desires any covenants or charges made or given in respect of the determination should be amended, discharged or released.

(g) Such other material particulars as are requisite for considering the application.

Power to call for information and production of evidence.

6. A local planning authority or the Board may by a direction in writing addressed to the applicant require such further information, in addition to that given in the application made to them, as may be requisite to enable them to determine the matter in respect of which the application is made to be given to them or such evidence as they may reasonably call for to verify any particulars of information given to them to be produced to an officer of the authority or Board as the case may be.

Citation and commencement.

7. These Regulations may be cited as the Town and Country Planning (Making of Applications) Regulations, 1948, and shall come into operation on the appointed day.[1]

EXPLANATORY NOTE

(*This Note is not part of these Regulations, but is intended to indicate their general purport.*)

These Regulations, which are made under Sections 73 and 102 of the Town and Country Planning Act, 1947, prescribe the manner in which application may be made—

(a) to a local planning authority for permission to develop land;

(b) to the Central Land Board to determine, confirm or vary a development charge.

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[1] July 1, 1948: see SI 1948, No. 213.

Private Rights and Ministerial Action

By T. A. Blanco White, Barrister-at-Law

I. General Principles on which the Courts Intervene (*ante,* p. 32).
II. **Objections to Planning.**
III. Development of one's Own Land.
IV. Opposition to Compulsory Purchase.
V. Disputes about Compensation.

II. Objections to Planning

1. The purpose of this article is to discuss the extent to which official planning action, and in particular the preparation and enforcement of development plans under the Town and Country Planning Act, 1947, can be subjected to judicial control.

Objections to Contents of a Plan

2. In the first place, it is clear that decisions as to the contents of a plan are to be regarded as essentially decisions of policy. There is, it is true, provision in s. 11 (2) of the 1947 Act (and similarly in s. 1 of the New Towns Act, 1946, which incorporates s. 16 of the Town and Country Planning Act, 1944), for the Court to quash a plan " if satisfied that the plan . . . or any provision contained therein, is not within the powers of this Act "; but the powers of local planning authorities to plan their areas as they like are not effectively limited by the Act. In particular, there is no effective limitation on the power given by s. 5 (2) to designate land as " subject to compulsory acquisition by the appropriate local authority "—except the financial limitation discussed in paragraphs 12 and 13 below.

3. This of course does not mean that there is no way of influencing a local plan. There are provisions in the 1947 Act (and in the New Towns Act, 1946) for preliminary discusssion and for consideration of objections. For instance, by s. 10 of the 1947 Act, a county council must " consider " any representations by county districts as to its proposed plan; and under Regulations to be made by the Minister there will have

to be provision for advertising a proposed plan and for considering objections to it. But so far as the Courts are concerned, these provisions merely operate to lay down the procedure by which the plan is to be brought into being. They do not offer any means of compelling the local planning authority to plan its area in one way rather than another.

4. It is indeed clear from s. 10 (3) of the 1947 Act that, in considering objections to a proposed plan, the Minister is not even bound by the rules that normally govern " quasi-judicial " activity. As has been pointed out (*ante*, p. 36), that subsection expressly gives the Minister power to hold discussions with the local planning authority behind the back of objectors (or *vice versa*); if the Minister were acting " quasi-judicially " in the matter such discussions would be precluded by the requirements of " natural justice ". This subsection is not surprising : it simply means that when the Minister has to decide whether to approve a local development plan in the face of objections, he is expected to act throughout on grounds of policy—to consider what is the best plan in the light of the policy of his department, and not whether the objectors to the plan have come off best in their argument with the local planning authority. The position is thus assimilated to that under the New Towns Act, 1946, where the Minister has to deal with objections to his own schemes for new towns.

It follows that in considering whether a given landowner should be advised to enter an objection to the approval of his local plan, the matter must be approached from a similar angle. The question to be considered is not : Are the reasons given by the local planning authority for dealing with this bit of land in this particular way, reasons that will stand up to analysis and argument? But : Is it going to be possible to persuade the Ministry that this bit of the plan is unwise or inexpedient?

Technical Objections

5. Formalities connected with the preparation and approval of plans are likely to offer a more fruitful field for litigation. The 1947 Act itself lays down some requirements (*e.g.*, in ss. 5 and 10) both for the form to be taken by a plan and for the procedure by which it is to be brought into force. Further requirements are apparently to be provided by Regulations. Undoubtedly, there will from time to time be failures to comply with these requirements, and the Act provides (s. 11 (2)) that the Court may quash the plan on the

application of any person whose "interests . . . have been substantially prejudiced" by any such failure. It is true that attempts to satisfy the Courts that the Ministry have failed to comply with the procedural provisions of the New Towns Act, 1946, have so far been uniformly unsuccessful; but the case under that Act is rather different. There, the requirements of the Act are few and clear, and it is the Ministry itself that has to comply with them; not all local planning authorities will be as astute as the Ministry, nor is there much reason to suppose that the Regulations to be made under the 1947 Act will be either very clear or very simple.

6. Sooner or later, then, various local planning authorities will produce plans that are formally defective. In some cases, it might be difficult to persuade a Court that there had been "substantial prejudice" to the rights of an individual landowner. A question of this type arose in *Rollo* v. *Minister of Town and Country Planning*, [1948] 1 All E. R., at p. 14, though the Court did not need to decide it; the applicants, who were private individuals, objected on the ground that their rights had been prejudiced by the Minister's not consulting certain local authorities before siting a new town in their area. In general, however, it is probably reasonable to assume that any formal or procedural failure, unless it is one that is trivial and also relates to a point that does not concern the applicant, will offer a reasonable chance of getting the plan quashed in whole or in part.

7. It does not follow, naturally, that any useful purpose will be served by taking advantage of such possibilities and getting the plan quashed. In most cases the result will be that the authority will re-submit the plan in a form that is just as objectionable to the man who had it quashed, if it is not substantially the same form, and the money spent in litigation will be thrown away. An instructive instance of such a Pyrrhic victory will be found in *Green* v. *Minister of Health* (No. 1) and (No. 2), [1946] K. B. 608 and [1948] 1 K. B. 34: there the objection (which may or may not have been sound in law) was successful, but its only ultimate effect was a "minor or consequential amendment" of the Housing Act, 1936, which removed the ground of objection. The Order concerned was then duly made again, and this time held valid. That was of course an extreme case: the same result can usually be achieved without legislation.

8. There will be cases where it is possible to make some technical objection that goes to the substance of the way in

which the plan treats a particular piece of land: in particular there may be defects in the way in which land is designated as "subject to compulsory acquisition". Defects like this should of course be watched for. What is not worth doing, except in the most exceptional cases, is getting a plan quashed "for the fun of it". But passions seem to run high over these matters, and if a plan is defective, no doubt someone will pay to have it quashed.

9. There is another reason why technical objections to a plan are seldom really worth pursuing. When the Act is examined, it will be found that in very few cases do the local planning authority's powers really depend on what is in the plan. They may sometimes depend on what appears to the authority to be in accordance with the plan, but that is another story. If it is possible to compel a substantial change in the plan no doubt the authority's policy will change accordingly; but where it is only possible to compel a small change the authority will seldom find it necessary to change their intentions at all. The designation of land as subject to compulsory acquisition is an exception to this: land is either so designated in the plan or it is not, and on designation depend powers of acquisition given later in the Act.

10. What is not possible, is to wait until in due course steps are taken to enforce the plan, and then object to its contents or to the way it was made. Care has been taken throughout the 1947 Act to ensure that such objections must be taken at the time or not at all. In particular, any Minister confirming a compulsory purchase order for "designated" land has power—and no doubt would use it—to ignore objections to the Order that "in the opinion of the Minister" amount merely to objections to the plan (s. 45 (1)).

Opposing the Enforcement of a Plan

11. When it comes to enforcing a plan, the position is slightly different. The local planning authority are, it is true, given extremely wide powers. They may, if it "appears expedient" (subject in most cases to the approval of the Minister), determine completely the use to which any piece of land in their area shall be put; while the appropriate authority may be authorised by the Minister to acquire any "designated" land (s. 38), and (under s. 43 (2)) the Central Land Board can be authorised to acquire any other land too. Thus any individual landowner, who finds his land affected by decisions of the local planning authority as to how his land

shall be made to conform to the plan, will probably be unable to compel the authority to leave his land alone.

12. Any large scale application of these powers must, however, be financially impracticable in most areas; the only such power exercisable by local planning authorities without substantial risk that compensation will have to be paid, is the power to refuse permission to develop land (as to this, see the next article in this series). As will be seen in the last of these articles, the rights to compensation given by the 1947 Act are seldom dependent on the Minister's discretion: they depend on questions of fact, such as whether land is capable of "reasonably beneficial use". Where the carrying-out of the plan involves destroying an existing right of the landowner, there is usually provided an enforceable right to compensation. The result will probably be, in many areas at least, that the wide powers given by the Act may be disregarded.

13. The provisions as to compensation react, in particular, on the power to designate land as subject to compulsory acquisition. Though there is no power to prevent compulsory purchase of land, there is power under s. 9 to prevent the permanent designation of land as subject to acquisition by an authority that it is not prepared to buy it. In the long run, this section may be found widely applicable.

14. Certain points are worthy of notice in relation to the miscellaneous powers of planning and enforcement given by ss. 28 to 33. So far as "tree preservation orders" and "building preservation orders" are concerned, the Act does little more than provide for the making of Regulations; it remains to be seen whether these Regulations will cut down the apparently unlimited powers of the local planning authorities to make such orders (so providing opportunities for judicial control), or will say anything about compensation. Control of advertisements also is left to Regulations, but with the suggestion that questions of amenity may be left to an independent tribunal. This in no way represents a departure from the practice of relying on the Minister's discretion: the Minister will no doubt lay down standards to which advertisements must conform, but it is in accordance with precedent that he should relieve his own staff of the unpopular task of exercising artistic judgment. S. 33, dealing with injury to adjacent property, might appear to limit the local planning authority's powers by insisting on serious injury to amenity, but the limitation is apparent only. There is no

enforceable difference between saying " if it appears . . . that the amenity is injured " and " if it appears that the amenity is seriously injured ". In neither case can a Court inquire into the soundness of the authority's judgment; the word " seriously " merely operates to guide the authority as to the way in which they are to look at the question.

15. In so far as the enforcement of planning control rests ultimately on the imposition of statutory penalties, it does of course involve bringing the matter before a Court. That Court, however, will have little more discretion in enforcing the policy of the Minister and of the local planning authority than it has in enforcing an ordinary penal statute : it can regulate penalties to suit the case, and on occasion—where the case is trivial, perhaps—may even refuse to enforce the law at all. But it cannot change the law, and sooner or later the landowner will have to comply.

SUMMARY

16. The position is best summarised, by saying that the making and enforcement of development plans illustrate very clearly the general principles laid down by the first article of this series. In particular :

(1) It is a valid objection to official action that there was no power to take it. The 1947 Act has, however, been designed to make this objection inapplicable to questions of the present type, so long as the appropriate procedure is followed.

(2) It is normally a valid objection that the appropriate procedural requirements have not been complied with. Such objections are of limited usefulness in the present case.

(3) Where the authority concerned makes it clear that planning action has been taken for purposes totally unconnected with planning, the Courts may hold that action invalid.

(4) Prejudice is here permissible in both Minister and local planning authority.

Valuation and Management

By W. A. Leach, F.R.I.C.S.

I. Development Rights of Owners (*ante*, p. 38).
II. **Effect of Planning on Property Management.**
III. Development Value—Development Charges—Effect on Property Values.
IV. Compensation for Planning Action other than Development.
V. Valuation for Compulsory Acquisition.
VI. Valuation for Injurious Affection.

II. Effect of Planning on Property Management

1. The management of property cannot avoid being influenced by the new Planning Acts, and consideration of the matter falls under the following headings:—

(a) the effect of the designation of a property under the development plan as subject to compulsory acquisition;
(b) how are lettings and leases affected by restrictions on change of use and alterations to buildings;
(c) what considerations arise in relation to proposals to build or rebuild;
(d) what is the procedure for applying for planning permission;
(e) effect of permission and determination of development charge;
(f) rights of objection to a development plan and development proposals of other owners;
(g) what records should be kept by the property manager;
(h) considerations affecting new purchases.

(a) *The Effect of Designation*

1. Under s. 5 of the Act land may be designated as subject to compulsory acquisition on a number of grounds. In approving the designation the Minister must be satisfied that acquisition is likely to take place within ten years from the date of his approval, or in the case of agricultural land within seven years. (Agricultural land is here defined by

reference to the Rating and Valuation (Apportionment) Act, 1928.)

Under s. 9 the authority on whose behalf the land was designated may be forced by " any owner of the land " after the lapse of twelve years either to acquire the land or release the designation. An " owner " is by s. 119 a person entitled to the rack rent.

2. It is clear that designation may operate as a " dead hand " on the land. There may be advantages in designation when all land likely to be acquired by any authority under any statute is covered by designation, so that owners may take it as fairly certain that land which is not designated will not be acquired. That, at any rate, is the official contention. Little inconvenience has been occasioned hitherto by the absence of that certainty but the position may be different if acquisition occurs in the future on a wider scale. The possible injury due to designation is admitted in s. 51 (3) which provides that when the land is acquired no account is to be taken of depreciation in value attributable to the designation.

3. The principal effects of designation will be (a) the difficulty in letting, for example, an empty shop, when an intending tenant may feel it would be a waste of time working up a business on the site, whatever his rights of compensation may be on dispossession, (b) the seeming futility of carrying out desirable improvements, and the unlikelihood of planning permission being granted (although this is partly provided for by s. 9 to the extent that, in certain circumstances, where planning permission is granted and the permitted development carried out, the designation ceases to have effect), (c) the unwillingness to incur expense or effort on anything, such as special decorations or laying out gardens, for which the purchase price under compulsory acquisition might not provide adequate compensation, (d) the difficulty of selling which may prove serious to people in financial straits if they have to sell at sacrificial prices, and may delay the winding up of estates on bankruptcy; also on the death of an owner, owing to the consequent difficulty in assessing value at the time of death for purposes of death duty. Possibly in practice these fears will prove to have been exaggerated.

4. With the possible widening of the scale of public acquisition, one point for the estate manager to keep in mind

generally, but especially in the case of land which is, or is known to be likely to be, designated, is the question of rent. Any recent letting would be put forward by one side or the other as evidence of value in negotiations on the acquisition, and a sympathetic rent, or a rent charged by a landlord not pressing to the limit of present scarcity rentals, or a rent modified because of the uncertainty of the term, would need to be explained away. The full rental value should be quoted initially, and the correspondence, etc., in which any modification was made and the reasons therefor indicated, should be carefully preserved. The rent will have to be valued for the period of the letting, but the reversionary value will remain more at large.

An alternative course where a rent less than the full market value is reserved (and a course which a tenant might agree to as a *quid pro quo*) might be to provide that the tenancy should have effect as a quarterly (or other periodic) tenancy on notification by the landlord to the tenant of service or constructive service on him of notice to treat in respect of his interest. Such an arrangement would not offend against para. 8 of Sched. II of the Acquisition of Land (Authorisation Procedure) Act, 1946, since no new interest is being created but an existing interest modified, and the purpose is not to increase the total compensation payable by the acquiring authority but to secure a greater proportion to a particular person interested in the property.

(b) *Effect on lettings and leases of restrictions on change of use and alterations to buildings*

5. In effecting lettings in future it will be necessary for either the landlord or tenant to ensure that premises can be used for the purpose of the intended letting, and that any alterations contemplated can be carried out.

The regulations to be made under s. 12 (2) (f) specifying classes of use within which there may be changes from one particular use to another (*e.g.*, grocer to confectioner) will help. The landlord should, however, always avoid holding out that the premises may be used in a particular way unless he is completely certain. Probably merely to provide in the lease that the premises may be used for a particular purpose is safe, but to provide that they may be used *only* for that purpose may be construed as a guarantee that that is a permitted purpose, or enable the lease to be rescinded if permission cannot be obtained. The tenant can hardly be presumed to have taken the premises to keep them vacant.

The tenant should always be made to understand clearly that he is taking the premises in their existing state of development and that if he wishes to carry out alterations he must obtain any necessary consent. If the landlord is to carry out alterations as a condition of the lease he should ascertain that he can do so before committing himself or qualify any undertaking given.

In general it would seem advisable that every new lease or tenancy agreement should provide that the tenant will obtain any necessary permission and approval under planning or otherwise for any use to which the premises may be put and any alterations that may be made from time to time, and will produce such permission and approval to the landlord together with evidence that any development charge payable has been arranged for to the satisfaction of the Central Land Board or their certificate that no charge is payable (ss. 70 and 71). It should also be provided that these conditions should be deemed to be attached to any licence granted by the landlord under the lease for change of user or the making of alterations.

In the case of existing leases it would seem reasonable to attach these conditions to any licence granted thereunder, for although, not being a successor in title to the tenant, the landlord would not be liable for the development charge under s. 74 (2), the lessee may fail when valuable buildings have reached, in the course of alteration, a condition when either proceeding with the alterations and paying the charge, or reinstating the property, would be equally uneconomic to the landlord. Further this confirmation will always be necessary where a tenant makes a claim for goodwill or improvements under the Landlord and Tenant Act, 1927. See also under heading (e) *post.*

(c) *Consideration arising in respect of proposals to build or rebuild*

6. The first considerations when the question of building arises are (a) will permission be granted and (b) if so, what will be the development charge? It will be possible to apply for a determination of both these matters at the same time. When land is being sold or let, the price or rent to be paid probably will not be finally agreed between the parties until these determinations have been made. There is, however, no

reason why tentative agreement should not be reached, for all the owner has to deal with is the existing use value (capital or yearly) and if the development charge is less than 100 per cent. of the value of the permission, that will be intended to encourage the development and not to put more money into the owner's pocket. In this connection reference may be made to the proviso to s. 72 (1) enabling the Central Land Board to have second thoughts where an interest in the land is transferred or created *after* they have determined the development charge and before the development has been carried out.

7. Much the same position will arise on rebuilding, but the point of especial interest in this connection is whether or not the new system will lead, as has been widely claimed, to the retention of old buildings. It must, however, be realised that the development charge is the difference in value between the land restricted to its existing state of development and its value with the benefit of the planning permission. If there are old but useful buildings on the site they may have some value and so mitigate the charge, but if the buildings are worn out they will have no value and the charge will be the higher. It will probably always be better to have buildings the value of which can reasonably be argued about, and that would seem to indicate that worn out buildings may not be left to encumber the site as long as at present. Also, the Central Land Board cannot afford to discourage proper rebuilding, and although a tenant or purchaser can never agree a rent or purchase price on the assumption of a development charge short of 100 per cent. (except as may be provided for in the relevant regulations) there is every prospect of reasonable moderation in the level of charges by reasonable moderation in the relevant valuations. It must also be kept in mind that where buildings are worn out or obsolete, notice requiring their removal may be served under s. 26, and it may be that where buildings are left to reach that condition there may be a less sympathetic approach by the Board.

There is, in addition, the practical consideration that failure by owners to rebuild when that course becomes appropriate, may lead to the best tenants moving to other areas.

(d) *Procedure for applying for planning permission*

8. Applications for planning permission are to be made in accordance with the Town and Country Planning (Making of

Applications) Regulations, 1948, *ante*, p. 82, made under s. 102 (1) of the Act. The intention is that all forms for planning permission, determination of development charge, and bye-law approval, should be obtainable at, and returnable to, one address. Separate forms will probably be required for the three (usually) separate authorities concerned, and the periods within which decisions must be reached by those bodies may vary. Regulations to this effect have yet to be made.

(e) *Effect of planning permission and determination of development charge*

9. Under s. 14, planning permission may be granted either permanently or for a limited period. The permission attaches to the land and enures for the benefit of any person interested in the land for the time being (s. 18 (4)). If the permission is for a limited period, that period may be extended under s. 18, but if it is not so extended there is a right (s. 18 (5)) to revert to the normal use (being a lawful use—see para. 4 (2) of Article I, *ante*, p. 39).

This may be an important matter in dealing with claims under the Landlord and Tenant Act, 1927. In the case of goodwill established under a limited period permission for the use, the possibility of extension of the period under s. 18 of the Planning Act of 1947, and the charge payable for the extension must be considered. It is only if the planning permission is permanent and the charge has been assessed on a permanent basis that the matter can be considered on the same footing as in the past.

As regards claims by tenants under the Landlord and Tenant Act, 1927, for compensation for *improvements*, here again if the consent is temporary the possibility of extension must be investigated and the cost of removal of the improvements considered. It is, of course, a *sine qua non* that no consent to improvements should be given by the landlord except subject to re-instatement or cesser of use in the event (*inter alia*) of any planning permission granted being for a limited period only. The development charge for improvements cannot be assessed for a limited period, and consideration may be necessary as to the possible refund from the Central Land Board under s. 73 if the planning permission is terminated at some future date, but in any case the tenant is not entitled under the 1927 Act to any sum in excess of the cost of the works or the improved value of the holding, whichever is the less. The landlord may, therefore, benefit substantially from a development charge which (subject to the right of the Board to revise it under the proviso to s. 72 (1)) enures for the benefit of any person interested in the land for the time being. The details of the assessment of a development charge will be dealt with in Article III.

(f) *Rights of objection to development plans and development proposals of other owners.*

10. The procedure to be followed in the making of a development plan will be governed by regulations to be made under s. 10 (2), but these are to provide that notice shall be given in the *London Gazette* and at least one local newspaper of the submission of a development plan or proposals for the amendment thereof to the Minister. No doubt, however, local planning authorities will give their citizens some indication of their proposals by exhibition and otherwise, as the preparation of the plan develops. No doubt, too, there will be some consultation with owners or their representative associations in the locality. The council of any district comprised in the plan is to be given an opportunity to make representations before the plan goes to the Ministry.

The regulations will provide how objections to the development plan or proposed amendments are to be made, and a local inquiry may be held.

It will, therefore, be desirable for the estate manager to examine any planning proposals as early as possible to see how the land for which he is responsible is directly affected, and how it may be indirectly affected by proposals relating to neighbouring land. It will be necessary to take this action at various times until the plan is finally approved by the Minister, but objections will have to be supported on the footing that any amendment desired is sound in relation to the particular land and will not be detrimental to the general scheme, or that the general scheme is itself defective in some respect. The former line is more likely to prove successful.

11. When an application to develop is made to the local planning authority they are to consider it with regard to the provisions of the development plan and any other material considerations. They may, therefore, in exceptional cases, give permission for development contrary to the development plan. S. 14 (3) (b) provides that the Minister may attach conditions to the exercise of this power and it is to be hoped that these conditions will include service of notice on owners of neighbouring property specified by the local planning

authority as likely to be affected, a right of such owners to object, and a further right to appeal to the Minister against the determination of the local planning authority—s. 16 provides only for an appeal by an aggrieved applicant for permission.

It is also to be hoped that the regulations will require that any person making a planning application shall have an interest in the property, and shall give notice of his application to others interested therein. Otherwise a freeholder's reversionary interest may be prejudiced by s. 51 (2) proviso although he has had no previous knowledge of the application for and refusal of permission, and no opportunity of making a claim under s. 20 within such time as may be allowed by the regulations (if a time limit is prescribed).

(g) *What records should be kept in relation to planning*

12. An owner wishing to change the use to which his property is put, or to alter or enlarge it, may find it necessary to prove how it was used on July 1, 1948, and that it has not been enlarged since that date. Further, if the sale of the property becomes necessary, the purchaser (especially an acquiring authority) may consider this information essential: a purchaser may, in fact, go further, and wish for proof that the building, together with the use thereof, either exists as it was on July 1, 1948 (or for three years thereafter, that the building and use have been validated under s. 75), or that subsequent alterations of use or to the buildings have been properly authorised.

A record of uses, photographs of the property, and at least sketch plans and sections thereof as existing on July 1, 1948, will therefore be important documents, in some cases almost as important, perhaps, as many of the documents of title.

Although much work will be involved it may accordingly prove wise in the long run to prepare a file of planning history for each property, or group of properties, containing a certified schedule of uses, dated photographs, and certified scale or sketch plans and sections; to this should be added a copy of every application made for planning permission, the relevant drawings, and the result of the applications including the formal permission if granted.

Details of claims and negotiations under Part VI will be of passing interest but may help as evidence of extent of buildings and nature of use on July 1, 1948. Copy applications to and forms of determination of development charges by the Central Land Board should be preserved in the file together with the relevant valuations.

Copies of applications by other persons interested in the property (*e.g.*, ground lessees) should be added, together with a memorandum on the result and the official reference on the form of permission, and on the Central Land Board determination.

(h) *Considerations affecting future purchases*

13. Part VI compensation is unpredictable as to the amount which may ultimately be received and should always be left to the vendor, purchases being at existing use value. Where the granting of a building lease or a lease under which the lessee is to carry out substantial alterations (or a change of use likely to involve a substantial development charge) is part of the purchase transaction, the purchase price should be the existing use value, the vendor retaining the right to claim under Part VI and the lessee undertaking responsibility for the development charge under Part VII of the Act. Alternatively, the purchaser might agree to bear the development charge or a fixed amount in respect thereof, the rent payable under the lease being adjusted accordingly, but pending the regulations under s. 58 (4) (b) (see *post*) this course may be unwise.

14. Where the purchase is of a ground rent reserved under a building lease, the building not having been commenced on July 1, 1948, or a rent reserved in a lease under which the lessee is to undertake substantial works not commenced, or a material change of use not established, on July 1, 1948, regard should be had to s. 58 (4) (b) of the Act (possible modification of terms of lease).

Reversionary interests must of course be valued on the basis of existing use.

15. Note that where an applicant for determination of a development charge assigns his interest or creates a fresh interest before the development has been carried out, the Central Land Board may vary their original determination. No negotiations for purchase should, therefore, be conducted on the footing that an earlier determination is final (s. 72 (1) (proviso)).

16. The necessary information in respect of planning matters is not likely to be obtained in the ordinary procedure of requisitions by the purchaser's solicitor and answers by

the vendor's solicitor. The surveyor will in future advisedly state in his report the extent to which he has investigated these matters, or qualify the report as being subject to there being nothing unfavourable. Any offer made for a property should be conditional upon the surveyor subsequently being satisfied on all matters connected with town and country planning and ribbon development.

The system adopted by one big purchaser is that all live documents including, of course, local search certificates, are passed by the solicitors to the surveyors for observations, and the surveyors take full responsibility for investigating planning proposals and inspecting development plans including checking proposals likely to lead to compulsory acquisition or designation of the land in the development plan and advising on planning inquiries under the following headings:—

(1) Is property being used as on July 1, 1948 ?

(2) (a) If answer to (1) is affirmative, was or were the use or uses established in conformity with earlier planning control, *i.e.*, established before the land became subject to planning, or in accordance with an operative planning scheme or a consent thereunder? If so established are conditions of any consent being adhered to ?

If use not established in accordance with previous planning control consider whether vendor should be required to apply for permission under s. 75. [*Solicitors to be instructed if action required.*]

If this application is approved no development charge is payable for continuation of use (s. 75 (7)). If the use accords with that generally prevailing in neighbouring premises, *e.g.*, shops and offices with a corresponding surrounding use in a central business area, further investigation will rarely be necessary unless the solicitor's local search reveals some special conditional consent or the neighbourhood is likely to be acquired for redevelopment. No further inquiry need as a rule be made in respect of a dwelling-house in single occupation.

(b) If use changed after July 1, 1948, there must be planning permission for the change unless it lies within the changes permitted in the Regulations as to classes (made under s. 12) or the change is not "material". There must also be evidence that the development charge has been paid or a certificate of the Central Land Board that none is payable unless the change falls within the Regulations as to classes under Schedule III. [*Solicitors to be instructed to obtain necessary information so far as not revealed by local search certificate.*]

Note 1: Information as to past use may be obtainable from description of premises in past valuation lists. The local planning authority may also have information.

Note 2: Although right under Schedule III to Act to extend cube of building applied to a use is free of development charge, it can only be exercised if planning permission granted.

(3) Are the buildings the same as at July 1, 1948 ? (ignoring internal alterations and alterations not materially affecting the external appearance of the building, permitted by s. 12).

(4) (a) If answer to (3) is affirmative were the buildings erected or altered in conformity with earlier planning control ? (See (2) above.) If so erected or altered have conditions of consent been adhered to ?

If not erected or altered in accordance with earlier planning control consider whether vendor should be required to apply for planning permission under s. 75. No development charge will be payable if permission granted, since this applies only to operations carried out after July 1, 1948. [*Solicitors to be instructed if action required.*]

(b) If buildings erected or altered (except as in (3)) since July 1, 1948, there should be a planning permission and evidence that development charge has been paid or a certificate of the Central Land Board that none is payable unless the works fall within Schedule III. [*Solicitors to be instructed to obtain necessary information so far as not revealed by local search certificate.*]

Note 1: Information as to extent, etc., of buildings at former dates may be obtained from plans deposited at local Town Hall.

Note 2: Although the right under Schedule III to Act to extend cube of buildings is free of development charge, it can only be exercised if permission granted.

(5) If buildings erected or altered since August 2, 1935,

and before July 1, 1948, were works subject to Restriction of Ribbon Development Act, 1935 ? If so, were necessary consents obtained and complied with ?

(6) If buildings erected or altered after July 1, 1948, has every requirement under s. 17 of the Restriction of Ribbon Development Act, 1935, been complied with ?

(7) Has any permission under planning or ribbon development been applied for and refused ? [*Inquiry to be made by solicitors.*]

(8) Has compensation been claimed or paid in respect of any refusal of permission or the attachment of conditions to permission under planning or ribbon development ? [*Inquiry to be made by solicitors.*]

(9) Is there a "tree preservation" order (s. 28), "building preservation" order (s. 29), "special" development order (s. 13), or are buildings included in a "list" of buildings (s. 30), or is the property subject to a planning agreement (s. 25 and Sched. X) ? [*Inquiry to be made by solicitors.*]

(10) Advertising display to be considered in light of regulations made under s. 31.

QUESTIONS WITH ANSWERS

Q.—In an area in which land has been selling at £6 per foot frontage there is a site with a frontage of 100 feet which has never been built on. What will be the value of the site on the appointed day?

A.—Its value as agricultural land, say £5, plus whatever value should be placed on the prospect of getting a dividend under Part VI of the Act of 1947, by way of compensation for the depreciation in the value of the site.

Q.—How should the site be valued for probate?

A.—At £5. No value should, at present, be placed on the prospect of the dividend under Part VI.

Dealings with Land under the Planning Acts

By HAROLD POTTER, LL.D., Barrister-at-Law

I. Inquiries Preliminary to Contract (*ante,* p. 48).
II. **Contract for Sale.**
III. Requisitions on Title.
IV. Conveyances on Sale.
V. Provisions in Settlements and Wills.
VI. Provisions in Leases and Mortgages.

II. Contract for Sale

1. Any attempt to draft the appropriate clauses requisite in a contract for sale after the Appointed Day (July 1, 1948) under the Town and Country Planning Act, 1947 (hereinafter referred to as the Act) is rendered difficult, because the interests of vendor and purchaser are, roughly speaking, in conflict. From the point of view of the vendor, he wishes to apply the maxim "*caveat emptor*" and to give as little binding information as possible. He will be afraid of the information being inaccurate and of his losing the contract by the purchaser refusing to complete. We think that there will be a tendency to draw contracts with strict conditions requiring the purchaser to assume that the "existing use" (see note on p. 116, *post*) of the property is not in contravention of the Act and that, the vendor being unaware of any charges or restrictions (except such as are disclosed), the purchaser shall take subject to any such charges or restrictions and shall not make any objection or requisition in respect of the same.

Within limits we think that some such clause may be necessary and even become common form in the same way as the common form clause concerning easements, etc. But the purchaser should be most anxious to avoid (i) any unforeseen liability, such as development charge, or notice given in respect of contravention prior to completion, and (ii) any unexpected limitations on user of the land imposed by the control under the Act (or under earlier Planning Acts) which have not been disclosed or are not obvious on inspection of the property. Consequently, he will desire the most explicit disclosures and description that he can get. To some extent this will be a matter of negotiation and as at the present time there is a sellers' market there is a danger that a practice will harden which is unduly favourable to the vendor. This may be emphasised in auction sales where preliminary inquiries cannot clear the air.

We can only suggest some alternatives and express our views on the dangers that purchasers may run. Furthermore, purchasers must remember that mere representations do not entitle them to specific performance with an abatement of the price: see *Gilchester Properties* v. *Gomm*, [1948] 1 All E. R. 493 (innocent misrepresentation of the total rents): nor will they be entitled after completion to obtain rescission or damages: *Rutherford* v. *Acton-Adams*, [1915] A. C. 866. It, therefore, behoves the purchaser to obtain the most complete details possible as terms of the contract. At the same time, however, it may be appropriate to remind vendors that, if specific performance is refused, *e.g.*, on the ground of hardship, the Court can order the return of the deposit, notwithstanding that there is no technical breach of the contract at common law: *Charles Hunt* v. *Palmer*, [1931] 2 Ch. 287.

2. The problems of the Act really fall into four separate classes: (1) adverse rights which may be registered under the Land Charges Act, 1925; (2) restrictions imposed by the Development Plan; (3) restrictions imposed by "existing user"; and (4) miscellaneous restrictions, such as Tree Preservation Orders.

(1) The matters requiring registration under the Land Charges Act, 1925, are:—

(a) development charges imposed in respect of unauthorised development—as a Land Charge Class A: s. 74.

(b) restrictions on development created by agreement between the parties—*quære* as a Land Charge Class D: s. 25 (2).

(c) lists of historic buildings—as a local land charge: s. 30 (3).

(d) *presumably*. Any development charge for an authorised development when the amount is repayable by instalments and is secured by a legal mortgage or legal or equitable charge, assuming that title deeds are not deposited—as a *puisne* mortgage, that is, Land Charge Class C: s. 71 (2).

It is to be noticed that proposals about Development Plans and Development Plans themselves do not require registration as local land charges; presumably because such a Plan is required by the Act to be submitted within three years: s. 5 (1).

(2) The scope of the restrictions imposed by the Development Plan can hardly be determined without the Plan itself, but the kind of thing that may be looked for is designation for compulsory purchase as part of a redevelopment plan: s. 5 (2): or for compulsory road widening when the road is less than bye-law width: s. 48. It does not seem probable that every building or yard of ground will have its "existing use" designated. Such a course would, naturally, simplify the problems of the conveyancer, but we do not think that this Act was designed for this purpose.

(3) The most intractable problem from the conveyancing point of view is the restriction of user of the land to "existing use", unless there is a development permission. This would not present so great a problem were it not for the fact that, unless the Development Plan provides the answer, it is not possible for a purchaser extrinsically to discover what is the "existing user". The "actual user" of the whole or part of the property may be a contravention of the Act, and this includes user contravening the previous Planning Acts: s. 75, which may enable the planning authority to require the property to be reconverted to its lawful user. If this was not required a "development charge" would probably be levied. Whether or not a sale must be by reference to "existing use" we will consider in some detail hereafter.

(4) Tree Preservation Orders: s. 28, Building Preservation Orders, s. 29, abatement notices: s. 33, enforcement notices: s. 23, and such-like miscellaneous provisions appear all to be matters of which the vendor ought to have notice and which require some active compliance. In our view they fall within the principle of *Beyfus* v. *Lodge*, [1925] Ch. 350 (notices to repair by the ground landlord forgotten on sale of lease) and cf. *Carlish* v. *Salt*, [1906] 1 Ch. 335 (party wall notices) and *Re Leyland and Taylor's Contract*, [1900] 2 Ch. 625 (notices to pave) and must be disclosed on the contract. The fact that the vendor has overlooked the notices would not assist. In the event of such notices never having come to his knowledge the vendor might be protected by a general clause, such as that mentioned earlier, but we think that it probably depends upon the general law about hardship and suitability for the purpose for which the land was purchased:

see *Re Puckett and Smith's Contract*, [1902] 2 Ch. 258. We have inserted a clause dealing with disclosure of these notices primarily by way of reminder, because it is obvious that the circumstances in each case will differ.

3. By virtue of s. 198 of the Law of Property Act, 1925, it has been held that registration as a local land charge is actual notice even though a prospective purchaser does not search the local land charges registry: *Re Forsey and Hollebone's Contract*, [1927] 2 Ch. 379; cf. *Coles* v. *White City (Manchester) Greyhound Association* (1929), 45 T. L. R. 230 (both cases involving registration of a town planning resolution). And as it stands, clause 20 of the General Conditions imposes the whole burden on the purchaser, but these matters will certainly require amendment. S. 198 is not in terms confined to local land charges, and, indeed, the converse is the case, so that if the decision cited above is correct a purchaser will always have notice of the matters falling under our head (1) in para. 2 above. If those matters had all been registrable as local land charges this would not have presented much of a problem in view of the current practice of searching the Local Land Charges Registers prior to contract. But search for other land charges is very awkward owing to the fact that registration is against the name of the estate owner and not the land.

In our view a purchaser should be protected by a clause in the contract definitely defining the existence or non-existence of any such charges. This clearly binds the vendor and would be in conformity with common practice regarding other charges registered under the Land Charges Act, 1925, which are not entered in the Local Land Charges Registers.

4. It may be argued that matters falling within head (2) of para. 2 (matters shown on the Development Plan) are also deemed to be known by a purchaser whether or not he has inspected the plan, because the plan is a public document open to inspection of which copies may be obtained: s. 10 (2) (*c*). At first sight the point might be covered by s. 199 of the Law of Property Act, 1925, which makes a purchaser subject to notice of any matter which would have come to his notice if he had made such inquiries and inspections as he ought reasonably to have made. It is submitted that this section (which replaces the Conveyancing Act, 1882, s. 3) has no relation to contracts for sale, but only to conveyances and is concerned with the doctrine of equitable constructive notice and not with non-disclosure. Furthermore,

there are other public documents of which it is not usual to assume notice, for instance, probates of wills.

It may, of course, be argued that, if s. 198 operates to bind a purchaser in the contract, this should also be true of s. 199 since they appear to be complementary sections. Nevertheless, in our opinion it is not reasonable to require a purchaser to search a Development Plan prior to contract. This becomes more evident if it is recalled that, at least in auction sales, the exact definition of the land can only be known on investigation of title. It is equally important to bear in mind that it is improbable that this plan will define completely the "existing user" having regard to the definition and explanation of "development" (see Article I on Control of Land Use, pp. 8–12, *ante*). This leaves us with the vital problem of the relation between "existing use" and the contract. It is thought that this can only be dealt with in the background of the old law, the elements of which it may be convenient to state.

Existing Use

5. How far the "existing use" is vital to the contract and the extent to which it must be disclosed turns primarily upon the issue how far the problem is one of "title" and how far description of the "subject matter". With the possible exception of matters requiring registration under the Land Charges Act, 1925 (see *Re Forsey and Hollebone's Contract*, *supra*): it is the duty of the vendor to disclose all matters of title that *should* be within his knowledge and it is not the duty of the purchaser to inquire, and this is so whether or not the sale is by public auction: *Reeve* v. *Berridge* (1888), 20 Q. B. D. 523; *Re White and Smith's Contract*, [1896] 1 Ch. 637. Thus it is not the duty of a purchaser to inquire of a tenant in occupation to whom he pays rent, because this is inquiring into the lessor's *title*: *Hunt* v. *Luck*, [1902] 1 Ch. 428, though, of course, the purchaser has notice of the existence of the tenant's rights. S. 199 of the Law of Property Act, 1925, does not appear to affect this position and these matters must be disclosed: cf. *Charles Hunt* v. *Palmer*, [1931] 2 Ch. 187.

On the other hand a purchaser is burdened with knowledge of all *patent* defects in the *subject matter* of the contract of which he would have known by reasonable inspection. So, he was bound by knowledge of a metalled highway that the land was subject to a public right of way: *Ashburner* v. *Sewell*, [1891] 3 Ch. 405: but he was not bound by a right of way which on inspection could have been a mere accommodation way: *Yandle* v. *Sutton*, [1922] 2 Ch. 199: *Simpson* v. *Gilley* (1922), 92 L. J. Ch. 194. Incidentally these cases indicate the difficulty in distinguishing between " title " and " subject matter ". It is suggested that the true answer is that all matters of " title " are *prima facie* latent defects, because a purchaser is not required to investigate title prior to contract. In fact, a purchaser will only be bound by matters in the nature of title, where either (i) there has been, prior to contract, a sufficient description of a document *and* a reasonable opportunity to inspect it: *Molyneux* v. *Hawtry*, [1903] 2 K. B. 487; or (ii) inspection of the land has put the purchaser on notice of rights affecting the land, such as highways or tenancies, which arise from the condition or occupation of the land.

Now it may be argued that restrictions on user designated by the Development Plan could be ascertained by inspection and, at least within a short time, such a plan must be assumed to exist and, therefore, the purchaser have knowledge of its existence. Leaving this on one side we may say that this does not apply to " existing use ". On inspection the purchaser may see a " use ", such as a private dwelling-house, but this is the apparent user. The title to continuance of that user is the " use " on July 1, 1948, together with any permitted " developments ". Even then, it is assumed that the existing use was not in contravention of the earlier Planning Legislation; s. 75, or was not on that day a temporary use (s. 12 (5)). This " title " to the use is clearly not open to inspection and therefore, we should assume that the question of " use " is now a matter of title. This would, we think, be clear enough, but for the old law about warranty of fitness. The relation between this and the new law is obscure and requires brief mention.

6. *Prima facie* on a sale of land there was no warranty of fitness for any particular purpose : cf. *Cheater* v. *Cator*, [1918] 1 K. B. 247 whether the defect is apparent on inspection, such as want of repair : *Ryall* v. *Kidwell*, [1914] 3 K. B. at p. 138; or is a latent defect, such as the disreputable character of the neighbourhood : *Ward* v. *Hobbs* (1878), 4 App. Cas. 13 at pp. 24, 25, 26, 29[1]: but cf. *Carlisle* v. *Salt*,

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[1] These cases mostly turn on sale of leaseholds, but it is generally assumed to be the law for freeholds as well.

[1906] 1 Ch. at p. 341. If, however, the purpose for which the land was to be used on completion was known to the vendor, he must disclose anything which would render it unsuitable for this purpose : *Re Puckett and Smith's Contract*, [1902] 2 Ch. 258; *Shepherd* v. *Croft*, [1911] 1 Ch. 521. Now, in fact, under the Act, the premises can only be used without permission for the "existing use" and, consequently, it is submitted that they must be sold with that purpose in mind. Hence there must be a warranty for the "existing use", and it is further submitted that from the point of view of the purchaser this must imply that the user at the date of the contract is the "existing use" for the purposes of the Act. If any part of the premises are used for a purpose in contravention of the Act it seems to be a misrepresentation of the "existing use". Indeed, we would go further. We fail to see how the "land" can be distinguished from the "existing use" and, therefore, the contract is in fact for the sale of the "existing use", and, as such, that must go to the root of the contract. This means that the old rule has gone and has been replaced by something quite different. It may even mean that, apart from express stipulation in the contract, a vendor could not force upon a purchaser a property the "existing use" of which prior to completion had been modified or discontinued in pursuance of an amended plan : s. 10, or of an order made under s. 26. This would be in conformity with the effect of requisition on a sale with vacant possession, where it has been held that such a requisition may be a breach of contract : *Macara* v. *Barclay*, [1945] K. B. 148, and cases there cited.

While we consider that the position is not free from ambiguity, it seems clear that, until decision is made, it is most desirable that there should be a definite clause determining the rights of the parties in the event of change.

7. There are two other reasons why we think that exact provision must be made with regard to the existing use:—

(1) Restrictive covenants have been treated as matters of title which must be disclosed on the contract and subject to which the conveyance must be made: *Re Cox and Neve's Contract*, [1891] 2 Ch. 109; *Re Wallis and Barnard's Contract*, [1899] 2 Ch. 515; *Hone* v. *Gakstatter* (1909), 53 S. J. 286. The restrictions and obligations of town planning more nearly approximate to restrictive covenants than to any other branch of the law: cf. s. 25: if, indeed, their earlier counterpart was not the "building scheme". Hence, on this ground alone,

we would suggest that full disclosure of the position is necessary.

(2) It is suggested that matters of "title" differ from "subject matter", because the first goes to the root of the question whether the vendor can convey what he has agreed to convey. Description of subject matter determines whether or not the vendor has agreed to convey something different in kind from what he can convey. In *Belcham* v. *Gawley*, [1930] 1 Ch. 56, a purchaser agreed to buy a dwelling-house. Unknown to him two sewers passed under the ground, but the Court held that he could not resist specific performance because the sewers did not alter the character of the dwelling-house. But he could claim an abatement in the price because the sewers were not vested in the vendor and so he could not convey all the land *ad inferos*, as in the case where mines and minerals have been severed prior to contract: *Re Jackson and Haden's Contract*, [1906] 1 Ch. 412. Party wall notices imposing liability were held to be matters of title: *Carlish* v. *Salt*, [1906] 1 Ch. 335, and non-disclosure of notices to pave also were a defence: *Re Leyland and Taylor's Contract*, [1900] 2 Ch. 625. But, today, the land, when conveyed, can only serve the "existing use" because user for any other purpose can be stopped. Hence, the vendor only has "title" to convey the "existing use" and, consequently, all matters connected with user are matters of title.

8. We have ventured to devote so much attention to the position of the "existing use" in relation to the contract because we feel that it is here that the Act is likely to cause most trouble. It will do so in connection both with open contracts and with contracts in which the description of the property follows the old familiar lines. We hope that we have said enough to convince readers that they are not justified in using the old forms and as time is short we propose to set out now what we consider desirable to go into the contract leaving for another occasion the consideration of what may happen if it is omitted.[2] For the sake of simplicity we may repeat something of what we have already said, but practitioners will probably find it convenient to have notes on the clauses all together. We have tried to offer alternative clauses where the negotiations are likely to result in the wishes of vendor or purchaser prevailing.

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[2] It is intended to deal with these problems in Article III, Requisitions on Title.

Description of Property

9. As will be gathered, in our view the description of the property presents the most difficult problem. It will certainly be simplified if the description of the subject matter and the description of the "existing use" are kept separate. For example, a contract to sell "a dwelling-house and outbuildings with 25 acres of land" may present real difficulty.

Buildings "or other *land*" "within the curtilage" of a dwelling-house may be used in connection with the dwelling-house without the change being a "development", s. 12 (2) (*a*). What is a "curtilage" is more than doubtful: see Shep. T. 94; *Marson* v. *L. C. & D. Ry.* (1868), L. R. 6 Eq. 101; *St. Martin's in the Fields Vestry* v. *Bird*, [1895] 1 Q. B. 428: nevertheless, we doubt whether the whole 25 acres could be described as the curtilage. The significance can be illustrated as follows. Suppose that on July 1, 1948, 23 out of the 25 acres were used as a dairy farm. Since that date the place has been owned by someone treating the 25 acres as a pleasure park. This is justifiable, apparently, if they are all within the curtilage, and the barns and outbuildings can be turned from cow byres to day and night nurseries! On the other hand, if we are right in assuming that the 25 acres are not within the curtilage, it is doubtful whether the farm buildings are either—and the whole business seems to go wrong. What is more, we think that the description of the property is inadequate and likely only to lead to difficulty. Therefore, the simple course is to have an ordinary physical description, preferably avoiding the use of such terms as dwelling-house, shop, etc., and follow this in a separate clause with a description of the existing use.

As we have indicated, the physical description can incorporate several parcels of land of which the "existing uses" are diverse. All that is necessary here is really careful drafting and it is not unknown in connection with leasehold premises used for a variety of purposes, though not usual in freeholds. Where the use is single, such as a dwelling-house, it can be simply described. Where there is more than one use, or, for example, it is a case of several parcels having the same use, as a block of flats, it is a question of more careful delineation. In complicated cases a schedule is clearly needed following the usual practice of conveyances of estates. In our view a plan should always be used and it is obviously convenient if the Development Plan, where it exists, is used.

In the case of registered conveyancing we can only hope that the Development Plan and the Land Registry Map will coincide. It is vital in this case to use the Registry Map. We mention registered conveyancing here in order to point out that we propose appending a note dealing with this matter as a whole and that our remarks are primarily addressed to unregistered conveyancing.

One other aspect of description should not be overlooked. It is by no means clear what will constitute development, because the vital words are "the making of any material change in the use of any buildings or other land": s. 12 (2). A simple illustration is the description "shop". If the shop is a tailor's shop, will it be a "development" if it is converted into a butcher's shop? Our inclination would be to say "No", but we are not sure, more particularly because if the tailor's shop was converted into an "off licence" it would almost certainly be a "development". A typical example of the danger line is to be found in the difference between "small holdings" and "market gardens": see *Bickerdike* v. *Lucy*, [1920] 1 K. B. 707; *Lowther* v. *Clifford*, [1927] 1 K. B. 130, though in one sense a market garden is usually a small holding. Under Schedule III, development charges will not be payable for buildings required "for agriculture or forestry *other than* for the erection, enlargement, improvement or alteration of dwelling-houses or of buildings used for the purposes of market gardens, nursery grounds or timber yards, or for other purposes not connected with general farming operations or with the cultivation or felling of trees". We do not pretend to know whether dairy farming (often conducted on a small holding) falls within "general farming operations". All we can advise is that not only should the use be defined but great care taken to define it accurately.

Development value

10. The right to receive payment in respect of any depreciation in value of the land owing to its limitation to its existing use vests in the owner of any interest on the Appointed Day: s. 64 (1). It is then transmissible by assignment or by operation of law as "personal property"; notice of such assignment being given to the Central Land Board: s. 64 (2). This being the case we think that a sale of the land cannot be deemed to include this right except expressly. As there is no immediate prospect of payment it may be simpler

to assign it, at any rate when sales take place shortly after the Act. If so, the form of clause to include it must vary as the claim has or has not been made. It is probably better not to make the contract anything more than an agreement to assign, because otherwise the assignment might be effective, though the sale of the land were never completed.

Some efforts should be made to ascertain whether a claim has any substance. It appears to be clear that in most cases no claim will be accepted. Development value can only be claimed if it exceeds £20 an acre and one tenth of the restricted value of the land : s. 63 (1).

Land Charges and other Incumbrances

11. Matters registered under the Land Charges Act, 1925, and notices such as Tree Preservation Orders do not need more than mere mention. The second group clearly must be disclosed and the former ought to be. No difficulty should arise in finding out whether or not such charges or notices exist and it is for the vendor's solicitor to inquire of his client.

Planning Modifications

12. The Planning position, at least in theory, is constantly fluid. The Development Plan is required to be reconsidered at least once every five years: s. 6, and can with the appropriate permission be amended as frequently as the authority sees fit. This will obviously apply to all aspects of planning. A Tree Preservation Order, for example, may come along at any minute, so to speak. If no mention is made of the point in the contract it is open to argument that these changes may operate to defeat the contract. Hence, it is imperative to have a clause providing for two things: (i) completion notwithstanding changes caused by alterations in the impact of planning; and (ii) the expense of complying with any notices, etc., that may be served on the occupier prior to completion. The second head is not really so simple. It is suggested that the expenses due to non-compliance with the planning requirements should be borne by the vendor and all others, *e.g.*, to give effect to change of amenity, should be borne by the purchaser.

Compulsory Acquisition Designation

13. What has been said of minor alterations or restrictions applies with even greater force in the event of the land being

designated for compulsory acquisition between contract and completion. Normally this will sterilise the land until the compulsory purchase is completed and it is obvious that no purchaser will wish to complete, though it must be borne in mind that in theory he will receive adequate compensation.

Planning Contraventions

14. It must also be borne in mind that conditions might have been imposed on the grant of permission to develop either under the old law or under the Act: ss. 14 (2), 18, and failure to observe these conditions would be a contravention of the Act. Any such conditions, therefore, should be set out. It also depends upon the contract to some extent how far the vendor is bound to maintain the property free from contraventions of the Act. It is submitted that this forms part of his duty to manage the property as a trustee prior to completion: see *Egmont* v. *Smith* (1877), 6 Ch. D. 469; *Clarke* v. *Ramuz*, [1891] 2 Q. B. 456; *Golden Bread Co.* v. *Hemmings*, [1922] 1 Ch. at p. 172 and see discussion in *Cumberland Consolidated Holdings* v. *Ireland*, [1946] K. B. 264. The vendor is even bound to protect the property against trespassers: *Clarke* v. *Ramuz* (*supra*); or against the accumulation of rubbish: *Cumberland Consolidated* v. *Ireland* (*supra*). And failure to fulfil this duty will render the vendor liable in damages even after completion: *ibid*. On the other hand the vendor is not entitled to claim for improvements made pending completion and it seems to follow that compliance with any directions, etc., under the Act not arising from contraventions should naturally fall upon the purchaser. Nevertheless, a clear cut provision until the question is settled seems the safest course.

Covenants for Title

15. It follows from the discussion in the earlier part of this article that it is a matter of doubt whether or not the invalidity of the " existing user " by reference to which the property is sold would be an infringement of the covenants for title or any of them. In any event the covenants for title of a vendor are qualified and it remains doubtful whether the fact that such user is a contravention can be said to be " anything . . . made done executed or omitted or knowingly suffered " by the vendor or any person through whom he claims: see Law of Property Act, 1925, Sched. II, Part I, and it seems even less likely to fall within the more limited covenant when the sale

is by trustees or mortgagees. In our view and for the reasons given we think that if the property cannot lawfully be used for the purposes for which it is conveyed there will be a breach of covenant for title. Since there is doubt on this point we are of opinion that the purchaser is entitled to an express clause in the contract that such a covenant will be incorporated in the conveyance.

16. We should point out that, for reasons of space, no reference has been made to special topics arising, for example, from the special capacity of the vendor. Probably a mortgagee selling under a power of sale will need special protection. Charity land, again, is in a special position. We hope to deal with these matters and with registered land in a later article.

NOTE.—The expression "existing use" had a special statutory meaning under the Town and Country Planning Act, 1932 (see section 53 of that Act). The expression is not defined in the Act of 1947, but it is used in the headings of Parts I and II of Schedule III to the Act dealing with excepted classes of development.

In this article the term is used to mean that user which will be lawful on July 1, 1948, and will not involve the payment of a development charge.

Clauses for Insertion in Contracts for Sale

[NOTE.—These forms are drafted with reference to the observations in the foregoing Article on Contract for Sale. Some of the forms are alternative and they are not all intended to be used together.]

1. (i) The "existing use" of the property hereby contracted to be sold as described in cl.   hereof shall be deemed to be in accordance with the Town and Country Planning Act, 1947, and the purchaser shall not make any requisition or objection in respect of the user of the whole or any part of the property on the ground that it contravenes the said Act.

(ii) The Vendor is not aware of any charges or restrictions imposed by or under the Town and Country Planning Act, 1947 [other than the charges or restrictions, particulars of which are given in cl. hereof] [but the property is sold subject to all such charges or restrictions and the Purchaser shall not make any requisition or objection on this ground] *or* [and the land is sold unincumbered by orders, charges, notices, restrictions or other matters [save as aforesaid] under or by virtue of the said Act].

2. (i) The land coloured blue in the plan is subject to a Tree Preservation Order made under the Town and Country Planning Act, 1947, and is sold subject to the same.

(ii) The land coloured brown in the plan is subject to an abatement notice served under section 33 of the Town and Country Planning Act, 1947, requiring the abatement of within weeks from the day of . The vendor will undertake compliance with the notice [but all reasonable expenses incidental thereto shall be borne by the purchaser].

3. The land [coloured green in the plan] is [subject to a development charge for securing £ , particulars of which are contained in the Schedule hereto, but subject thereto the whole of the land hereby contracted to be sold is] not subject to any charges or restrictions registered as charges under the Land Charges Act, 1925, pursuant to the Town and Country Planning Act, 1947.

4. The property is sold for the "existing use" as a [private dwelling-house]. This use was the permitted[1] use [subject to the developments authorised by permission[s] granted on the day of , by the Planning Authority] on the first day of July, 1948 [and the vendor will supply a statutory declaration to that effect if required at the purchaser's expense] *or* [and the purchaser shall not require any evidence that the existing use is validly exercised].

5. The several parcels of land together with the buildings thereon agreed to be sold were on the first day of July, 1948, "used" within the meaning of the Town and Country Planning Act, 1947 [subject to the "development[s]" as defined by that Act authorised by permission[s] granted by the Local Planning Authority on the day of] for the purposes described in the Schedule hereto [and the vendor will supply a statutory declaration to that effect if required at the [purchaser's] expense] *or* [and the purchaser shall not

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[1] This should cover the fact that the actual use on July 1, 1948, was a temporary use and not the "existing use" for the purposes of development: s. 12 (5).

require any evidence that the existing use as so described is validly exercised].

The Schedule above referred to:

NO. ON PLAN	DESCRIPTION	AREA	EXISTING USE
1	Barley Field	50 acres	agricultural land
2	Hollow Farm	5.75 acres	dwelling-house and pleasure garden.

6. The land agreed to be sold is subject to a Development Plan issued by the Local Planning Authority on the day of [as amended on the day of] and the purchaser shall be deemed to have notice of all designations, restrictions or other obligations affecting the said land and shall not make any objection or requisition in respect of the same.

7. The land agreed to be sold is subject to the following charges, orders, notices or matters made or done under or by virtue of the Town and Country Planning Act, 1947, but is otherwise free from such charges, orders, notices or matters as aforesaid :—

(i) The land coloured brown on the plan is subject to a Development Charge made the day of for securing the payment of £ by instalments of £ of which instalments are now remaining unpaid [2];

(ii) The land coloured green on the plan is subject to a Tree Preservation Order, particulars whereof can be inspected at the office of the vendor's solicitor and the purchaser shall be deemed to have notice thereof [3];

(iii) Notice has been served by Local Planning Authority under s. 33 of the Town and Country Planning Act, 1947, in respect of the waste land coloured yellow in the plan, particulars whereof have been supplied to the purchaser;

(iv) Permission to develop the land coloured red on the plan was given on the day of , subject to the following conditions, namely :—

8. The land coloured blue on the plan is subject to a compulsory purchase designation in the Development Plan issued by Local Planning Authority dated the day of

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[2] S. 71.

[3] S. 28.

and the purchaser shall make no objection to the vendor's title on this ground.[4]

9. In the event of the issue of a [*or* any modification [5] of the] Development Plan affecting the land agreed to be sold by virtue of the Town and Country Planning Act, 1947, or of any order modifying or changing the use of the said land or requiring the removal or alteration of any buildings on the said land [6] in pursuance of the Act prior to completion the purchaser shall have no right to rescind this contract or claim any abatement in the price hereby agreed to be paid [*or* the purchaser shall have the right to rescind this contract or to complete the same with an abatement in the price hereby agreed to be paid the amount of such abatement in default of agreement to be fixed by arbitration].

10. Prior to completion the vendor [at the cost and reasonable expense of the purchaser] shall comply with any notice or direction or carry out any works or operations or the removal of any works directed by any local or other Planning Authority in accordance with the Town and Country Planning Act, 1947 [and shall indemnify the purchaser against any loss or damage occasioned by failure to fulfil this clause in the contract].

11. The vendor will on completion enter into an express covenant in the conveyance to the purchaser that any contravention of the Town and Country Planning Act, 1947 or any Act replaced by the said Act done omitted or suffered prior to completion shall be deemed to be a "thing . . . done omitted or suffered" within the covenants deemed to be included in a conveyance by virtue of section 76 of the Law of Property Act, 1925.

12 (i) This contract does not include any right or claim of or in the development value in respect of restricted user under the Town and Country Planning Act, 1947, of the land agreed to be sold.

or (ii) This contract includes an agreement to assign all rights and claims whatsoever of and in the development value in respect of the restricted user under the Town and Country Planning Act, 1947 and the vendor will enter into a covenant with the purchaser to make any application or do any act matter or thing reasonably necessary to substantiate or enforce such rights and claims on the part of the purchaser but at the purchaser's expense.

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[4] See ss. 5–11.

[5] See s. 6.

[6] See s. 26.

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"Planning Law" Notes

Some of the wide open spaces of the Town and Country Planning Act, 1947, have been developed—in other words some essential orders and regulations have been issued. In the May issue of this *Journal* there appeared the Making of Applications Regulations (*ante*, p. 82). In the June issue there are the Claims for Depreciation of Land Values Regulations (*post*, p. 142), the two Use Classes Orders (*post*, pp. 145, 148) and the General Development Order (*post*, p. 149).

If anything of real importance is issued after this has gone to press a note of it will be found in a special inset in the centre of this issue.

A valuable statement of principle by the Chairman of the Central Land Board in respect of development charges will be found at p. 123, *post*.

Subscribers will observe from the cover to this issue that Mr. E. J. Rimmer, Barrister-at-law, has joined the Editorial Board.

A small supply of " Cordex " binders to hold the *Journal of Planning Law* has been received and subscribers are being notified (in the order in which they subscribed) when these binders are available. The price of the binders is 8s. each post free.

Per Sir Malcolm Eve, k.c. : " Everything was going fine until some one threw a planner in the works."

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the Managing Editor, *c/o* Sweet & Maxwell, Ltd., 3 Chancery Lane, London, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Sir Malcolm Eve says—

During the course of addressing a meeting of the Royal Institution of Chartered Surveyors on May 3, 1948, the Chairman of the Central Land Board, Sir Malcolm Trustram Eve, K.C., said the Government had laid before Parliament General Principles upon which, if approved, the Board would proceed in fixing the amount of a development charge :

1. Development charge shall be determined so as to secure, so far as practicable, that land can be freely and readily bought and sold or otherwise disposed of in the open market at a price neither greater nor less than its value for its existing use. This object is the Governing Principle by which the Board are to be guided in determining development charge.

2. Development charge shall not be more than the amount which, to the satisfaction of the Board, represents the additional value, measured by normal processes of valuation, of the land due to planning permission of a particular development.

3. Development charge shall not be less than the amount last referred to, unless in the opinion of the Board the charge ought properly to be less in order to comply with the Governing Principle.

4. Where in the special case of any land of a class referred to in Part VIII of the Act (which provides for the application of the Act to special cases) the application of the foregoing principles would, in the opinion of the Board, be inappropriate, the Board shall apply the Governing Principle subject to such modification as is in their opinion appropriate to that special case.

Sir Malcolm stated that the Board wished to gain experience before framing their policy on the various methods of paying the development charge. At present the view of the Board is that in the normal case the development charge should be paid as a single capital sum before development commences. In cases where payment is deferred, the security required will normally be some form of security other than a charge on the land.

Control of Land Use

By Desmond Heap, LL.M., L.M.T.P.I.,

Comptroller and Solicitor to the Corporation of the City of London

I. Planning Law and the Meaning of "Development" (*ante,* p. 7).

II. Planning Law and Development Permission (*ante,* p. 63).

III. **Planning Restrictions and the Recovery of Compensation.**

IV. Planning and the Designation, Development and Disposal of Land by Local Authorities.

V. Planning Control and its Enforcement.

VI. Planning and the Preservation of Trees, Special Buildings and Amenities.

III. Planning Restrictions and the Recovery of Compensation

1. The marginal note to s. 18 of the Town and Country Planning Act, 1932, reads "Provisions as to compensation for injurious affection, etc." and subsection (1) (*a*) of the section proceeds to make provision for the recovery of compensation (*inter alia*) by any person whose property is injuriously affected by the coming into operation of a planning scheme made under the 1932 Act. Any claim for such compensation has to be made to the responsible authority under the operative planning scheme within the time limited by s. 22 (2) of the 1932 Act, that is to say, within twelve months of the coming into operation of the scheme, unless the scheme itself provides for a longer period.

2. If such a claim is duly made and compensation is awarded in respect of injurious affection caused by the coming into operation of the planning scheme, additional compensation may be awarded (s. 18 (2) of the 1932 Act) in respect of any additional injurious affection which the property may be said to have sustained by reason of the fact that since the coming into operation of the 1932 Act, the Minister of Town and Country Planning (or his predecessor, the Minister of Health) has, on appeal made to him under s. 10 (5) of the 1932 Act and the Town and Country Planning (General Interim Development) Order, 1946 (or its predecessors) either refused to grant an application for permission to develop the property or has granted the application subject to conditions.

3. It will be noted from the foregoing that no compensation whatever can be recovered under s. 18 (1) (*a*) of the 1932 Act unless and until a planning scheme made under the Act and affecting the land in question has come into operation. Few such schemes have in fact come into force. Indeed, it is understood that little more than four per cent. of the land in England and Wales is now covered by operative planning schemes, the remainder of such land being subject to interim development control either by reason of planning resolutions formally passed by planning authorities and approved by the Minister under s. 6 of the 1932 Act or by reason of s. 1 of the Town and Country Planning (Interim Development) Act, 1943.

4. There must be a number of persons who, during a period of interim development control, have been refused permission by an interim development authority to develop their land, or who have been granted such permission subject to conditions. Such persons, having unsuccessfully appealed to the Minister against the interim development authority's decision, may well have been cherishing the hope that when the particular planning scheme which would bring to an end the period of interim development control over their land ultimately came into operation, they might *then* be able to recover compensation for injurious affection under s. 18 (1) (*a*) of the 1932 Act and also perhaps some additional compensation under s. 18 (2) of that Act for the additional injurious affection caused by their having been, at an earlier date, either refused interim development permission to develop their land or granted such permission subject to conditions. It is clear that such persons will not now recover any such compensation. The reasons for this are simple and they are two in number. In the first place, s. 18 of the 1932 Act will be totally repealed on July 1, 1948, on the coming into full operation of the Town and Country Planning Act, 1947, and, in the second place, any planning schemes in course of preparation on that date will dissolve without ever achieving completion. Thus it is that compensation, the claim for which is based generally on injurious affection caused by planning and by the restrictions inseparable from planning (the right to make such claim being one of the characteristic features of the compensation provisions of the 1932 Act) disappears from the planning picture on July 1, 1948 for the Town and Country Planning Act, 1947, contains no provisions which correspond with s. 18 (1) (*a*) of the 1932 Act.

5. This leads to a consideration of the specific instances in which compensation (*other than compensation payable on the*

acquisition of land) does become payable under the provisions of the 1947 Act. These instances are *eight* in number and will now be examined in turn.

(1) *Compensation in certain cases on the refusal of permission for development or on the grant thereof subject to conditions*

After July 1, 1948, all development of land (including buildings) whether taking place before or after the coming into operation of a development plan will require planning permission (s. 12 (1)). Such permission may be granted by Art. 3 and Sched. I to the Development Order (*post*, pp. 152, 160) made under s. 13 (1) by the Minister, and, if not so granted, must be obtained from the appropriate local planning authority, the method of application therefore being dealt with in Art. 2 in this series, *ante*, p. 63.

Generally speaking, if planning permission is refused or is granted subject to conditions, no compensation is payable, notwithstanding the fact that, as a result of such a refusal or such a grant, injurious affection (to use the now outmoded nomenclature of the 1932 Act) is sustained by the landowner seeking to develop his land.

The limited cases in which compensation in such circumstances *can* be recovered are now referred to in s. 20 (1) of the 1947 Act, and the six kinds of development which alone attract compensation in the circumstances aforesaid are set out in Part II of the Third Schedule to the Act and may be summarised as follows :—

(i) The enlargement, improvement or other alteration as often as required of (a) any building in existence on July 1, 1948, or (b) any building substituted for a building which was in existence before July 1, 1948, but which has been destroyed or demolished since January 7, 1937, provided the cubic content of the original building is not increased in the case of a dwelling-house by more than one-tenth or 1750 cubic feet (whichever is the greater), and in any other case by more than one-tenth. (See also s. 112 (2), (3) of the Act).

(ii) The carrying out of building or other operations for agricultural or forestry purposes (but not dwelling-houses or market garden or nursery buildings) on land which was agricultural or forestry land on July 1, 1948.

(iii) The working of minerals on land occupied along with agricultural land, provided such minerals are reasonably required for use on the agricultural land, *e.g.*, for fertilisation or the repair of agricultural buildings.

(iv) Where a building or land is used on July 1, 1948 (or, if unoccupied on that day, was last used on or after January 7, 1937), for a purpose falling within any general class specified by order (see *post*, p. 148), the use of that building for any *other* purpose falling within the *same* general class.

(v) Where part of a building or land is, on July 1, 1948, used for a particular purpose, the use for the same purpose of an additional part not exceeding one-tenth of the cubic content of the first part. (See also s. 112 (3) of the Act.)

(vi) Where the site of any land is, on July 1, 1948, used for the deposit of waste materials or refuse *in connection with the working of minerals* (the italicised qualification should be noted), the use for the same purpose of any additional part of the site reasonably required in connection with the working of such minerals.

It should be remembered that it is a condition precedent to the recovery of any compensation, even in the limited cases above mentioned, that the applicant shall challenge the decision of the local planning authority in refusing planning permission or in granting the same subject to conditions, by appealing against such decision to the Minister under s. 16 of the Act.

It is to be specially noted that no compensation is payable in respect of a refusal of planning permission or the grant thereof subject to conditions, in respect of the two types of development falling within Part I of the Third Schedule to the Act, which part relates, *inter alia*, to (a) the replacement of war-damaged buildings, and (b) the use of single dwelling-houses for the purpose of two or more dwelling-houses, *e.g.*, for the purpose of flats.

(2) *Compensation on the Minister's Refusal to Confirm a Purchase Notice*

On a refusal by a local planning authority of permission for development or upon the grant thereof subject to conditions, an aggrieved developer may, in certain circumstances, require his land to be purchased by the council of the county borough or county district (*i.e.*, not necessarily the local planning authority) for the area where the land is situated by serving upon the appropriate local authority a purchase notice (s. 19 (1)).

The purchase notice requires confirmation by the Minister before it can become effective (s. 19 (2)) and before confirming any such notice the Minister must be satisfied (s. 19 (1)) that—

(a) the land to which it relates has become incapable of reasonably beneficial use in its existing state; and

(b) in a case where permission to develop the land has been granted subject to conditions, that the land cannot be rendered capable of reasonably beneficial use if the development is undertaken in accordance with those conditions; and

(c) in *any* case the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which permission (a) has been granted, or (b) is deemed to be granted under Part III of the Act, or (c) has been undertaken to be granted by the local planning authority or by the Minister.

But even if the Minister *is* satisfied as mentioned in the previous paragraph he is not bound necessarily to confirm the purchase notice. If it appears to him that the land in question could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out of some different kind of development for which planning permission ought to be granted, then he may, in lieu of confirming the purchase notice, direct that permission for such other development shall be granted in the event of the developer making an appropriate application in that behalf (s. 19 (2) proviso (*b*)). If the Minister does take this latter course, then it may be that compensation will be payable by the local planning authority under s. 20 (3) of the 1947 Act if the developer can show that the permitted development value (s. 20 (4)) of his land, having regard to the type of development for which the Minister has directed that permission shall be granted, is less than its compulsory purchase value (s. 20 (4)), the amount of compensation payable being equal to the difference between those two values (s. 20 (3)).

(3) *Compensation for Abortive Expenditure, Loss or Damage Consequent upon the Revocation or Modification of Permission for Development*

Once permission for the development of land is granted under the 1947 Act it will enure, unless revoked or modified, for the benefit of any person for the time being interested in the land in respect of which it was originally granted (s. 18 (4)), but it is to be remembered that a local planning authority can by order, made by the authority and confirmed by the Minister, revoke or modify any planning permission granted by them (s. 21 (1)) provided that they do this at any time—

(a) before building operations authorised by the permission have been completed, in which case the revocation or modification is not to affect so much of the building operations as have been carried out; or

(b) before any change of use authorised by the permission has taken place (s. 21 (3)).

If a local planning authority does so revoke or modify a permission for development, it may be that expenditure which has been incurred in the carrying out of such part of the development as had already been executed by the time the revocation order or (as the case may be) the modification order becomes operative, will be rendered abortive by reason of such revocation or modification. Again, the developer may be able to show that he has in other respects sustained loss or damage directly attributable to the revocation or modification of the planning permission originally granted to him.

In the foregoing circumstances compensation may be claimed by the developer from the local planning authority in respect of the aforementioned abortive expenditure, loss or damage (s. 22 (1)). No compensation, however, will be payable in respect of loss or damage which consists of the depreciation in the value of the land by virtue of the revocation or modification of the original planning permission unless a development charge under Part VII of the Act in respect of the development has either been paid or none is payable in the circumstances (s. 22 (1) proviso). It is also to be noted that no compensation for abortive expenditure will be payable in so far as the expenditure has been incurred on work carried out before the original planning permission was granted, but this does not apply to expenditure incurred in the preparation of plans and similar matters for the purposes of the development in question (s. 22 (2)).

(4) *Compensation for Interference with Authorised Buildings and Discontinuance of Authorised Uses*

Development plans are liable to alteration and notions as to what constitutes the proper planning of an area change with the passing of the years. Accordingly, the proper planning of land may require from time to time the removal, or prohibition, of development originally undertaken with all due planning permission and a local planning authority may, by order made by the authority and confirmed by the Minister, require the alteration or the removal of any authorised building or the discontinuance of any authorised use of land (s. 26 (1)). If this is done compensation will be payable to any person in respect of the depreciation in the value of his interest in the land or in respect of the disturbance of his enjoyment of the land (s. 27 (1)). Such a person may also claim compensation for expenses reasonably incurred by him in complying with the requirements of a local planning authority respecting authorised development (s. 27 (2)).

(5) *Compensation in connection with a Tree Preservation Order*

By means of a Tree Preservation Order a local planning authority may prevent the cutting down, topping, lopping or wilful destruction of trees and woodlands which, in the interests of amenity, the authority feels should be preserved (s. 28 (1)). Compensation may become payable, subject to such exceptions and conditions as may be specified in the Order, to any person in respect of damage or expenditure caused or incurred by reason of the fact that any consent required by the Order to be obtained from the local planning authority is either refused by the authority or is granted subject to conditions (s. 28 (1) (*d*)).

(6) *Compensation in connection with a Building Preservation Order*

A Building Preservation Order may be made by a local planning authority restricting the demolition, alteration or extension of any building of special architectural or historic interest (s. 29 (1)) and the Order may provide for the payment of compensation, subject to such exceptions and conditions as may be specified in the Order, to any person in respect of damage or expenditure caused or incurred by reason of the fact that any consent required by the Order to be obtained from the local planning authority is either refused by the authority or is granted subject to conditions (s. 29 (2) (c)).

(7) *Compensation for Expenditure on Removal of Certain Advertisements*

The control of advertisements is referred to in s. 31 of the 1947 Act, but all details with respect to such control remain to be given out in regulations yet to be made by the Minister under that section. The expression " advertisement " is given wide definition by s. 119 (1) of the Act.

If the regulations provide for the removal of an advertisement displayed on the date when the regulations come into force and expenses are incurred by a person in complying with the requirements of the regulations with respect to such removal, such person may, subject to the provisions of the regulations, recover from the local planning authority compensation in respect of any expenses reasonably incurred by him in so doing provided, however, that no compensation is recoverable if the advertisement was not being displayed on January 7, 1947, the date when the Bill which ultimately became the 1947 Act, was introduced into Parliament.

(8) *Compensation for Abortive Expenditure on the Refusal of Permission for Certain Development Authorised before July* 1, 1948

Compensation is payable for abortive expenditure where application to a local planning authority is made before January 1, 1949, for planning permission to complete buildings or works begun or contracted for before July 1, 1948, which are in conformity with the provisions of an operative planning scheme or of an interim development permission still existing on July 1, 1948, but granted *before* July 22, 1943 (the date when the Town and Country Planning (Interim Development) Act, 1943, came into force) and, on appeal, the application is refused by the Minister or is granted by him subject to conditions (s. 79 (1)).

Planning as Affecting Interests in and Value of Land

By E. J. RIMMER and J. STUART DANIEL, Barristers-at-Law

I. Main Consequences of the Act of 1947 (*ante*, p. 15).
II. Compulsory Acquisition (*ante*, p. 71).
III. **New Principles of Compensation for Compulsory Acquisition.**
IV. Claims upon and Payments out of Central Fund.
V. Development Charges.
VI. Mineral Rights and other Special Cases.

III. New Principles of Compensation for Compulsory Acquisition

1. Part V of the Town and Country Planning Act, 1947, amends generally the law relating to compensation on compulsory acquisition, and is not confined to a strictly " planning " context. But the amendments to the law of compensation are founded upon the new structure of planning and it is essential that an owner of property, or those advising him, should understand the relation between the two and the effect that they will jointly have upon the value of land compulsorily acquired. The amended law is of some complexity, particularly in its application to special cases.

2. Before Part V of the Act is considered in detail it is necessary to glance briefly at the previous position, particularly at those provisions which are still operative. The present structure as a whole may be summarised thus :

A. The Acquisition of Land (Assessment of Compensation) Act, 1919, for the first time introduced definite rules for the valuation of land acquired by government departments or local or public authorities. These rules appear in s. 2 of that Act, and subject to later modifications still form the basis of assessment. The value is to be that which would obtain if the land were sold by a willing seller in the open market. No allowance is to be made because the acquisition is compulsory and any value attaching to a use which is contrary to law or could be restrained by a Court is to be disregarded. In certain cases which are discussed later in this article compensation is to be assessed on the basis of equivalent reinstatement.

B. If the acquisition is made under the Acquisition of Land

(Authorisation Procedure) Act, 1946, the arbitrator must disregard any interest in land and any work carried out on it if he is satisfied that the interest was created or the work done with a view to obtaining increased compensation and was not reasonably necessary (see the Act of 1946, Sched. II, Part III).

C. By the Town and Country Planning Act, 1947, the arbitrator is required to disregard any development or redevelopment value that the land may have except that arising from the prospect of development which could be carried out without payment of a development charge (Third Schedule development). He must also assume, so as to exclude the special value of "vacant possession" in the present shortage of accommodation, that the property is subject to a lease expiring in 1954.

D. If any part of the claim is based upon severance or injurious affection of other land of the owner the arbitrator must ignore the same factors and make the same assumptions as in C above.

E. Claims based on disturbance of business by acquisition remain unaffected by legislation.

3. The changes brought about by the Act of 1947 require some special consideration. S. 50 (1) of the Act abolishes the 1939 standard of prices, which had been introduced by the Town and Country Planning Act, 1944, in all cases where the notice to treat was served after the passing of the Act. S. 51 formulates the new principle of assessment for all cases, other than equivalent reinstatement cases, where notice to treat is served after the appointed day (July 1, 1948). Where notice to treat is served between the passing of the Act and the appointed day special considerations arise which are dealt with later.

4. S. 51 (2) eliminates development value from the assessment of compensation. Hitherto, "market value", even when restricted to 1939 prices, has naturally included the value deriving from the prospect of development. The assumption will now be "that planning permission would be granted under Part III of this Act for development of any class specified in the Third Schedule to this Act, but would not be granted for any other development". Since "development" includes any material change in use, and since the classes of development mentioned in the Third Schedule are limited, the effect of this provision is to cut down the market value in all but exceptional cases to what might be obtained if the purchaser were for ever restricted to using the land for

the same purposes as those for which it is being used at the date of the notice to treat. This is a necessary corollary to the transfer of development value from owner to State which is achieved elsewhere in the Act by the introduction of development charges. In other words, compensation on compulsory acquisition will keep in step with the general decrease in value of land which previously derived any value from prospects of development, and, eventually, when the estate market fully reacts to the implications of the Act of 1947, there should no longer, in principle, be any discrepancy between the compensation payable by an acquiring authority and the price which a private buyer should be willing to give.

The provisos to s. 51 (2) ensure that there will be no overlap between compensation payable on compulsory acquisition and that payable under planning law in respect of either the refusal or revocation of permission or the discontinuance of an authorised development.

5. Apart from the assumptions to be made as to planning permission, a word should be said about development already carried out at the date of the notice to treat. It may be that in some cases land will be acquired on which development had been carried out before the appointed day in contravention of previous planning control. If an enforcement notice has been served the arbitrator will then have to take into account the requirements of the enforcement notice (s. 75 (6)). It seems to follow from this, though the point is not entirely clear, that if an enforcement notice has not been served, the value of such development may be included in the assessment.

Authorised development after the appointed day will of course be taken into account. Where an unauthorised development takes place after that date, then it seems probable that its value will be excluded on the principle that it is contrary to law.

6. It is important to observe that if notice to treat under compulsory acquisition takes place before the owner has carried out a development for which he has received planning permission assessment of compensation will, by virtue of s. 51 (4), be made on the assumption that such permission has *not* been granted. This provision is subject to two exceptions: first, if a development charge has already been paid; secondly if no development charge is payable by reason of any of the provisions of Part VIII of the Act—for instance if the land is operational land of statutory undertakers or is held upon charitable trusts, or if the owner has obtained a

certificate under s. 80 in the case of land " ripe for development " on the appointed day.

7. It has been stated above that the difference between the price paid by an acquiring authority and that which a private buyer would be willing to give should vanish. But this is subject to a temporary qualification which produces, in the interest of the public but to the detriment of the forced vendor a similar discrepancy. By s. 52 where land carrying a right to vacant possession is acquired under a notice to treat served at any time before January 1, 1954 the compensation is to be assessed as though the land were subject to a lease. This fiction is designed to eliminate from compensation the increased value which " vacant possession " attracts in the present scarcity of accommodation. It does not apply to agricultural property (which is defined in s. 52 (4)), nor to dwelling-houses subject to the Rent Restrictions Acts where the vendor is out of possession. The notional lease is deemed to begin on the date of the notice to treat and to end on January 1, 1954. The hypothetical tenant is deemed to be liable for tenant's rates and taxes, for insurance and other expenses necessary to maintain the land in the state in which it was on the date of the notice to treat. The imaginary rent is five per cent. of the capital value, or the rent which might reasonably be expected from a tenant with the above liabilities whichever is the less. S. 52 (4) makes it clear that the capital value is " restricted value ", that is to say, the value which would obtain on compulsory acquisition apart from the provisions of this section. It is on the assessment of the notional rent that the effect of this section in practice will depend.

It remains to consider special cases, which are dealt with below under their several headings.

Land Qualifying for Compensation on the Basis of Equivalent Reinstatement.

8. By s. 2 rule 5 of the Act of 1919 land devoted to a purpose of such a nature that there is no general demand for it in the market, *e.g.*, a church, was excluded from the principle that compensation should be paid on the basis of the market value. In such cases, if the arbitrator is satisfied that reinstatement is genuinely intended compensation may be assessed on the reasonable cost of equivalent reinstatement. This is still the position. The operation of Rule 5 is expressly

saved by s. 51 (1) of the Act of 1947. The making of a claim on this basis is at the option of the claimant, who may (in rare cases) prefer to claim on the basis of market value. In the case of land held upon charitable trusts the latter alternative might sometimes be preferred since on the compulsory acquisition of such land (see s. 85) compensation may be assessed on the assumption that planning permission will be granted for development, without charge, of a kind to make the use of the land correspond with that prevailing on adjacent land.

War-Damaged Land

9. Cases where the appropriate payment for war-damage is a value payment are not specifically provided for by the Act of 1947. The effect of the Act will therefore be that when such land is compulsorily acquired compensation will be governed by the general principle of restricted value which has been discussed above. But it is important to note in this connection that since it will be assumed that permission will be given for Third Schedule Development, and since the Third Schedule allows the rebuilding (without payment of a charge) of property destroyed since January 7, 1937, a considerable redevelopment value will be included in the compensation. The owner will also retain the value payment.

Where the appropriate payment is a cost of works payment, then if the damage has been made good no question arises, but if any of it has not been made good at the date of the notice to treat then the position will be governed by s. 53 of the Act. The effect of this section is that where land is acquired in these circumstances the compensation will be assessed on the assumption that the whole of the damage had been made good at the date of the notice to treat; while the right to receive the " converted value payment " (which is provided for in such a case by the War Damage Act, 1943), will vest in the acquiring authority. If other works have been carried out since the war-damage, *i.e.*, works other than making good such damage, the claimant may obtain whichever is the higher of two sums :

(1) The value on the assumption that the war-damage had been made good and the other works removed or

(2) The value on the assumption that the war-damage had not been made good so far as the making good would

have involved the removal of the other works (s. 53 (2)).

Section 56 deals with compensation to be paid on the basis of equivalent reinstatement in the case of war-damaged land. Its effect is that if the damage has not been made good and if the appropriate payment is a payment of cost of works, then if, but for the damage, the land would be devoted to a purpose for which there is no general demand, compensation may be assessed on the basis of equivalent reinstatement as though the land were in fact devoted to such a purpose. The assessment is to be made by reference to the state of the land immediately before the damage and, as in the other cases, the converted value payment will vest in the acquiring authority.

Requisitioned Land

10. The main principle of assessment in the case of requisitioned land is set out in s. 54 (1). This is simply that the new method of assessment will apply as though the land were not requisitioned, so that the owner will not suffer from the depreciation in value caused by the requisitioning. The "notional lease" will be brought into play if apart from the requisitioning the land would carry the right to vacant possession. Part VIII of the Requisitioned Land and War Works Act, 1945, will continue to apply in appropriate cases so that generally speaking where land is acquired by Ministers or local authorities under notice to treat served before December 10, 1952, the assessment will exclude both decrease in value due to government war use and increase in value due to government war works, unless these have been paid for by a person interested in the land. When, therefore, Part VIII of the Act of 1945 is applicable, and this will be so in most cases where requisitioned land is acquired, the assessment of compensation must disregard both the requisitioning itself and its results, that is, the effect on the value of the land of government use and government works. This by itself would create some difficulty in the assumptions with regard to planning permission which must be made under s. 51 (2). Accordingly it is provided by s. 54 (2) (*a*) that in such cases references in the Third Schedule to the appointed day shall be read as references to the beginning of the period of requisition (where this is earlier). If the owner has paid for the works, then in order that he may retain the benefit given him by the Act of 1945 these will be assumed to have been erected before the period of requisition (s. 54 (3)).

Notice to Treat Between the Passing of the Act and the Appointed Day

11. In the case of a notice to treat served after the passing of the Act (August 6, 1947), and before the appointed day (July 1, 1948), compensation is governed by s. 55 of the Act. This section applies the provisions of Part V generally to such cases, but the basic assumptions with regard to planning permission are of necessity modified since planning permission cannot be given under Part III of the Act until after the appointed day. The assumption in these cases will be that at the date of the notice to treat the land was subject to a permanent restriction prohibiting any but Third Schedule development. Unfortunately the substituted assumption does not carry with it a provision corresponding to that in s. 51 (4) (*b*), so that an owner of land " ripe for development " will not in this case be able to obtain any preferential treatment.

This anomaly is discussed in another article in this issue at page 169. Under s. 55 the value of the land will be ascertained by reference to prices current immediately before January 7, 1947, but, it is understood, there has been no substantial alteration in prices since that date.

Compensation for Disturbance

12. The Act of 1947 does not affect the principle, which emerged from case law and was preserved by the Act of 1919, that an owner is entitled to claim compensation for disturbance consequent on compulsory acquisition, *e.g.*, for business loss or cost of removal. Such claims were held to be excluded under the old law, however, if the owner obtained a purchase price including development value since he would have had to give up possession to realise that value : *Horn* v. *Sunderland Corporation*, [1941] 2 K. B. 26. Now that a claim based on development value is a thing of the past, claims for compensation for disturbance may become relatively more important and frequent.

Severance and Injurious Affection

13. The Act of 1947 provides (see s. 119 (4)) that reference to the compensation payable in respect of compulsory acquisition of land shall be construed as including a reference to compensation for severance and injurious affection of other land held with the land acquired. The Act, therefore, does

not preclude an owner from claiming compensation on these grounds but if the severed land is capable of development no value will be attributed to such prospects.

14. The above covers in outline the new principles affecting the assessment of compensation for the compulsory acquisition of land. It will be clear that the ordinary landowner will have to thread his way through a forest of assumptions before he can arrive at the proper basis on which to claim compensation in any particular case. Later articles in this Journal will consider in detail some of the more obscure and special cases and will attempt to clarify them by illustration.

Minister of Town and Country Planning
List of Regional Offices

Region No. 1 ..	12 Sydenham Terrace, Newcastle-on-Tyne 2.
Region No. 2 ..	Hopewell House, 173 Woodhouse Lane, Leeds 2.
Region No. 3 ..	Government Buildings, Chalfont Drive, Western Boulevard, Nottingham.
Region No. 4 ..	Shaftesbury Road, Brooklands Avenue, Cambridge.
Region No. 5 ..	13 Grosvenor Square, W.1.
Region No. 6 ..	26 Bath Road, Reading, Berks.
Region No. 7 ..	3 Woodland Road, Bristol 8
Region No. 8 ..	66 Park Place, Cardiff.
Region No. 9 ..	1 Norfolk Road, Edgbaston, Birmingham 15.
Region No. 10 ..	100 Palatine Road, West Didsbury, Manchester 20.
Region No. 12 ..	24 Calverley Park, Tunbridge Wells, Kent.

NOTE: There is no Region No. 11.

Question and Answer

The following conversation may be supposed to take place between an owner of property, Sir Orquard Question, and a solicitor, Mr. Dusty Answer.

Q. I've bought a big house to convert into flats. I've done it before, you know.

A. So you know all about it.

Q. I know about getting building bye-law permission and building licences. And I even obtained interim development permission for a conversion I did last year.

A. Yes, you had to get that. Conversion of a house into flats always has been considered a change of use.[1]

Q. Well, can I go ahead now?

A. Before the Appointed Day—July 1, 1948? Why not?

Q. I shall not be able to do anything before July.

A. Then you will have to get planning permission under s. 12.

Q. Shall I have to pay a development charge?

A. No. I think not, unless you are making big structural alterations.

Q. Well, there is no real change in the position, is there?

A. No. The 1943 Act first put the teeth into planning control.

Q. How is that?

A. If you go ahead without getting planning permission you may have an enforcement notice served on you.

Q. So what?

A. It might be that you would have to reconvert the place into a single dwelling-house.

Q. They wouldn't do that. Not while there is a housing shortage.

A. Or you could be fined for contravention of the notice.

Q. How much?

A. £50, plus a daily penalty of £20.

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[1] T. & C. Planning (General Interim Development) Order, 1946, para. 4 and Explanatory Memorandum, para. 12.

Q. Oh! Though I don't believe they would fine me for that. Very well, that is enough of that. Now for another matter—I have a war-damaged site, it is a vacant site you understand, the house was completely destroyed. What is its value today?

A. That is a little complicated. Let us take it by stages. At the present moment the site is vacant and will presumably be so on July 1, next.

Q. Yes.

A. And before it was destroyed what was there on it?

Q. A shop with flats over it.

A. So you have the right to rebuild a shop with flats over it without having to pay a development charge.

Q. I should hope so.

A. You could even build a slightly bigger shop and flats, if you could get the plans passed and if you could get a licence.

Q. (*sotto voce*) If I had some bacon I could have some bacon and eggs if I had some eggs.

A. Quite so. But you have still to get planning permission under s. 12.

Q. To reinstate war damage!

A. And it may, of course, be refused.

Q. On payment of compensation I should hope.

A. No. No compensation is payable.

Q. Oh, come!

A. Your remedy under s. 19 is to compel the local authority to buy the land on the ground that it is unusable.

Q. But at what price?

A. At a price calculated on the footing that you have a right to rebuild.

Q. So the value of my site is?

A. Whatever value your surveyor puts on it after he has considered all these factors. That, I am glad to say, is not my job.

Statutory Instruments

Claims for Depreciation of Land Values Regulations, 1948
(SI 1948, No. 902)

Made	*April* 29, 1948
Laid before Parliament	*April* 29, 1948
Coming into Operation	*July* 1, 1948

THESE Regulations have been made by the Minister of Town and Country Planning under ss. 60, 64, 111 of the Town and Country Planning Act, 1947.

Making of Claims and Furnishing of Information

Reg. 3 prescribes the manner of making claims for payments out of the global sum of £300 millions under the Scheme to be made by the Treasury under s. 58 of the Act for loss of development value, *i.e.*, in respect of the depreciation in value of interests in land by virtue of the provisions of the Act. The claims are to be made on form S, 1 to be issued by the Central Land Board. Copies of this form will be obtainable at the offices of county, borough, urban and rural district councils and at the Regional Offices of the Board. In London they will be obtainable at the County Hall or, in the City of London, at the Town Clerk's Office, 55–61 Moorgate, London, E.C.2. (Press Notice, dated May 12, 1948.)

The information required by the Board appears from the questions in the form (see reg. 3 and as to additional information, see reg. 5).

Claims are to be made during the period July 1, 1948–March 31, 1949 (reg. 4). This period may be extended, but not beyond June 30, 1949 (reg. 11).

A claim and any information given to the Board in relation thereto must be related to the interest in the land as it subsisted on July 1, 1948 (reg. 6). Exceptional cases are land in process of compulsory acquisition and land in respect of which the ordinary rules for the ascertainment of the development value are modified (reg. 6).

An assignment of the right to receive a payment or any part thereof is of no effect unless notice in writing of the assignment, containing information enabling the Board to identify the land and the relevant interest therein, is transmitted to the Board within the period commencing on July 1, 1948 or the date on which such assignment takes effect (whichever is the later) and ending on December 31, 1952 (reg. 7).

Where, after a claim has been duly made and before January 1, 1953, an enforcement notice is served in relation to development contravening previous planning control or steps are taken to acquire the interest in the land under compulsory powers, the claimant is required to notify the Board in writing within thirty days of the enforcement notice, notice to treat or contract for sale as the case may be (reg. 8).

The Board may require any information given to them to be verified by statutory declaration (reg. 9).

Reg. 10 is designed to ensure punctual compliance with the obligations of the claimant as regards the making of claims and the furnishing of information.

Determination of Development Value

The Central Land Board are the authority for determining development values. A statement by the Board of their proposed determination must state the amounts of the unrestricted value and restricted value by reference to which the Board propose to determine the development value. The Board are required to serve on the claimant notice in writing of the proposed development value and of the amounts of unrestricted value and restricted value. The claimant has sixty days after service of such notice to object to the Board's proposals. After considering any objections the Board are required to determine the amount (if any) of the development value and serve notice in writing thereof on the claimant (reg. 12).

Disputes arising in relation to determinations of development value are to be settled by an arbitrator appointed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919 (reg. 13).

Determinations may become void if before January 1, 1953, there come to the knowledge of the Board matters relating to contraventions of previous planning control which involve a modification of the assumptions required to be made for the purpose of calculating development value. Determinations may also become void if before the same date there come to the knowledge of the Board any matters by virtue of which an adjustment is required to be made, in relation to land in process of compulsory acquisition, of any calculation previously made of the restricted value or the unrestricted value (reg. 14).

A claimant who complains of irregularities in the determination of development value may within six weeks of such determination apply to the High Court to quash the determination (reg. 15 (1)).

Subject as stated above, a determination of development value is conclusive (reg. 12 (5)) and the right to make satisfaction of payment under the Treasury Scheme on the basis of such determination may not, after the expiry of the six weeks mentioned above, be questioned by prohibition or certiorari or in any other legal proceedings whatever (reg. 15 (2)).

Claim forms will be obtainable at the offices of county, borough, and urban and rural district councils: Ministry of Town and Country Planning Circular No. 43, dated May 6, 1948.

Town and Country Planning (Making of Applications) Regulations, 1948

These regulations are printed in full on p. 82, *ante*. The Ministry of Town and Country Planning have issued an explanatory Circular, No. 41, dated April 14, 1948. The effect of the Regulations is that application forms in connection with bye-laws, planning and development charge will be obtainable from one office (the county borough council or the county district council for the area), and may be sent in together to the same office. In London, applications are receivable by the London County Council or, in the City, by the City Corporation. It has not proved possible to arrange, at this stage, for application to be made for bye-law consent, planning permission and determination of development charge on a single form. Regulations to that effect under s. 102 (2) of the Act, have, therefore, not been made, nor has it been possible to arrange, at present, for a combined decision on these matters.

The Regulations do not prescribe any forms, but model forms are being issued by the Ministry. An Appendix to the Circular indicates how a system of separate forms of application for bye-law consent, planning permission and determination of development charge might work.

Town and Country Planning (Use Classes) Order, 1948

(SI 1948, No. 954)

Made	*5th May,* 1948
Coming into operation	*1st July,* 1948

This Order was made by the Minister of Town and Country Planning under s. 12 (2) (*f*) of the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51).

The Schedule to the Order specifies twenty-two "use classes". Where a building or other land is used for a purpose of any class so specified the use of such building or other land for any other purpose of the same class is not to be deemed, for the purposes of the Act, to involve development of the land (art. 3 (1)), and therefore does not require planning permission under s. 12 of the Act.

Ancillary uses are regarded as included in main uses and not affected by the fact that the main use and the ancillary use are included in separate use classes (art. 3 (3)); *e.g.*, part of a factory may be used as offices.

Where a group of contiguous or adjacent industrial buildings, which form a single undertaking, includes buildings used for purposes falling into several different industrial classes, there can be interchange of the uses between the various buildings. There can also be alteration of the proportion of accommodation allotted to purposes in different classes, provided that the proportion allotted to purposes falling into the General or Special Industrial classes is not substantially increased (art. 3 (2)).

The Use Classes

CLASS I. SHOPS. A "shop" is a building used for the carrying on of any retail trade or retail business wherein the primary purpose is the selling of goods (excluding refreshments other than light refreshments) by retail. Without prejudice to the generality of the foregoing, shop includes a building used for the purposes of a hairdresser, undertaker, ticket agency or receiving office for goods to be washed, cleaned or repaired or for other purposes appropriate to a shopping area, but does not include a building used as an amusement arcade, pin-table saloon, funfair, garage, petrol filling station, hotel or premises licensed for the sale of intoxicating liquors for consumption *on* the premises (art. 2 (2)). "Light refreshments" mean eatables not cooked on the premises and beverages (art. 2 (2)). A "building" includes part of a building and includes land occupied with the building and used for the same purposes (art. 2 (2)).

Any kind of shop within the definition can be changed to any other kind of shop within the definition except (i) a fried fish shop, (ii) a tripe shop, (iii) a shop for the sale of pet animals or birds; (iv) a cats-meat shop.[1]

CLASS II. OFFICES. Office includes a bank (art. 2 (2)).

CLASS III. LIGHT INDUSTRIAL BUILDINGS. "Industrial building" means a building (other than a building in or adjacent to and belonging to a quarry or mine and other than a shop) used for the carrying on of any process for or incidental to any of the following purposes, namely,

(*a*) the making of any article or of part of any article, or

(*b*) the altering, repairing, ornamenting, finishing, cleaning, washing, packing or canning or adapting for sale, or breaking up or demolition of any article, or

(*c*) without prejudice to the foregoing paragraphs, the getting, dressing or treatment of minerals, being a process carried on in the course of trade or business other than agriculture, and for the purposes of this definition the expression "article" means an article of any description, including a ship or vessel (art. 2 (2)).

"Light industrial building" means an industrial building (not being a "special industrial building") in which the processes carried on or the machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit (art. 2 (2)).

CLASS IV. GENERAL INDUSTRIAL BUILDINGS. "General industrial building" means an industrial building other than a light industrial building or a special industrial building. Broadly speaking, it will be open to an industrialist, unless any contrary conditions have been imposed by the terms of a planning permission,

(a) to re-allocate his accommodation so as to provide such ancillary uses as a canteen, an office, recreation space, storage space, etc., or so as to provide more or different space within his building for any such ancillary uses;

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[1] The General Development Order, art. 3, Sched. I, Class III, *post*, pp. 152, 160, permits change of use from any of these excepted categories to any other kind of shop.

(b) if the existing use of his building falls within several industrial classes, to re-allocate the accommodation between those uses and to vary the proportion of the accommodation allotted to the different purposes;

(c) if the existing use of a group of buildings, used as parts of a single industrial undertaking, falls within several industrial classes, to re-allocate the accommodation between those uses and to vary the proportion allotted to the different purposes, provided that the proportion allotted to general and special industry is not increased;

(d) to change the use from a general industrial building to a light industrial building.[2]

CLASSES V to IX. SPECIAL INDUSTRIAL BUILDINGS. There are excepted from the class of general industrial buildings those used for the special industrial purposes minutely specified in the order.

CLASS X. WHOLESALE WAREHOUSES, except for storage of offensive or dangerous goods. "Wholesale warehouse" means a building where business, principally of a wholesale nature, is transacted and goods are stored or displayed but only incidentally to the transaction of that business (art. 2 (2)).

CLASS XI. REPOSITORIES, except for storage of offensive or dangerous goods. "Repository" means a building (excluding any land occupied therewith) where storage is the principal use and no business is transacted other than incidentally to such storage (art. 2 (2)).

CLASS XII. BUILDINGS USED FOR PUBLIC WORSHIP, religious instruction or the social or recreational activities of the religious body using the building.

CLASS XIII. BOARDING SCHOOLS, residential colleges, orphanages, etc.

CLASS XIV. BOARDING HOUSES, guest houses, residential clubs, hostels, or hotels providing sleeping accommodation.

CLASS XV. CONVALESCENT HOMES, nursing homes, sanatoria or hospitals.

CLASS XVI. HEALTH CENTRES, school treatment centres, clinics, creches, day nurseries, or dispensaries, consulting room not attached to the residence of the consultant or practitioner.

CLASS XVII. MENTAL HOSPITALS, etc.

CLASS XVIII. REMAND HOMES, etc.

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[2] See the General Development Order, art. 3, Sched. I, Class III, *post*, pp. 152, 160.

CLASS XIX. THEATRES, cinemas, music halls.

CLASS XX. ART GALLERIES (other than commercial) museums, public libraries or reading rooms.

CLASS XXI. DANCE HALLS, skating rinks, swimming baths, turkish or other vapour or foam baths, gymnasiums, buildings used for indoor games.

CLASS XXII. PUBLIC HALLS, concert halls, exhibition halls, social centres, community centres or non-residential clubs.

The Minister has issued in relation to this Order an Explanatory Memorandum, dated May, 1948, and Circular No. 42. The Circular suggests that local planning authorities might grant planning permissions by reference to the Order, *e.g.*, for "buildings at ——, in accordance with submitted plans and to be used for any purpose within Class —— of the Town and Country Planning (Use Classes) Order, 1948, other than ——": Local planning authorities are asked to meet requests for planning permission covering all the industrial classes where there are no planning objections to the uses asked for.

Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948

(SI 1948, No. 955)

Made *5th May,* 1948

This Order was made by the Minister of Town and Country Planning under para. 6 of Schedule III to the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51). It came into operation immediately. It may not be amended or revoked at any time after July 1, 1948 (Act of 1947, s. 111 (4)).

Schedule III to the Act of 1947 sets out certain classes of development which an owner of land is assumed to have permission to undertake when assessments of compensation or development charge are being made under the Act. Para. 6 of that Schedule provides that one of such classes shall be, in the case of a building or other land which was used on the appointed day (July 1, 1948), or, if unoccupied on that day, was last used since January 7, 1937, for a purpose within any general class specified in a ministerial Order, the use of that building or land for any other purpose falling within the same general class.

This Order specifies the general classes accordingly in terms which are identical with those of the Town and Country Planning (Use Classes) Order, 1948, which is summarised above.

The Explanatory Memorandum and Circular 42 mentioned at the end of the preceding note are equally applicable to this Order.

Town and Country Planning (General Development) Order, 1948

(SI 1948, No. 958)

Made	*5th May,* 1948
Laid before Parliament	*6th May,* 1948
Coming into Operation	*1st July,* 1948

The Minister of Town and Country Planning, in exercise of the powers conferred on him by ss. 13, 14, 16 and 114 of the Town and Country Planning Act, 1947, and of all other powers enabling him in that behalf, hereby orders as follows :—

Application, citation and commencement.

1.—(1) This Order shall apply to all land in England and Wales :

Provided that if a special development order is made as to any such land this order shall apply thereto to such extent only and subject to such modifications as may be specified in the special order.

(2) This Order may be cited as the Town and Country Planning (General Development) Order, 1948, and shall come into force on the appointed day.

Interpretation.

2.—(1) In this Order, unless the context otherwise requires, the following expressions have the meanings respectively assigned to them, namely :—

"the Act" means the Town and Country Planning Act, 1947;

"the appointed day" means the day appointed for the coming into force of the Act;

"aqueduct" does not include an underground conduit;

"building" does not include plant or machinery or a structure or erection of the nature of plant or machinery but includes any other structure or erection and any part of a building as so defined;

"classified road", "road" and "trunk road" have the meanings respectively assigned to these expressions by the Trunk Roads Acts, 1936 and 1946; and in relation to a trunk road the reference to a proposed road in the definition of road shall include a reference to the site of a proposed road shown in a development plan as likely to be the subject of an order under s. 1 of the Trunk Roads Act, 1946;

"contravention of previous planning control", in relation to any development, has the same meaning as for the purposes of s. 75 of the Act;

"development affecting trunk roads" means

(*a*) the formation, laying out or alteration of any means of access to a trunk road: and

(*b*) any other development of land within 220 feet from the middle of a trunk road or such lesser or greater distance as may be specified in relation to trunk roads generally or to a particular trunk road by directions given under paragraph (3) of Article 9 of this Order;

"development plan" means a development plan as approved or made by the Minister or as for the time being amended, under Part II of the Act;

"Educational Authority" means a Local Education Authority for the purposes of the Education Act, 1944, or the Governors or Managers of a Voluntary School under that Act;

"educational land" and "educational buildings" mean respectively land and buildings held prior to October 1, 1945, for a purpose within the scope of the Education Act, 1944;

"emergency accommodation" means school accommodation needed in connection with the raising of the compulsory school leaving age under the Education Act, 1944;

"industrial process" means any process for or incidental to any of the following purposes, namely:—

(*a*) the making of any article or of part of any article, or

(*b*) the altering, repairing, ornamenting, finishing, cleaning, washing, packing or canning, or adapting for sale, or breaking up or demolition, of any article, or (*c*) without prejudice to the foregoing paragraphs, the getting, dressing or treatment of minerals, being a process carried on in the course of trade or business, and for the purposes of this definition the expression " article " means an article of any description, including a ship or vessel;

" industrial undertakers " means undertakers by whom an industrial process is carried on, and " industrial undertaking " shall be construed accordingly;

" local highway authority " in relation to a road, means the local authority responsible (otherwise than as agents) for the maintenance of the road;

" mine " includes any site on which mining operations are carried on;

" mineral undertakers " means undertakers engaged in mining operations and includes undertakers licensed under the Petroleum Production Act, 1934, to search and bore for and get petroleum; and for the purposes of this Order any land in respect of which a licence is in force under the said Act authorising any undertakers to search and bore for and get petroleum shall be deemed to be comprised in their undertaking;

" mining operations " means the winning and working of minerals in, on or under land, whether by surface or underground working;

" the Minister " means the Minister of Town and Country Planning;

" private way " means a road or footpath which is not a highway repairable by the inhabitants at large;

" public vehicle " means a public service vehicle, tramcar or trolley vehicle within the meaning of those expressions in the Road Traffic Act, 1930;

" shop " means a building used for the carrying on of any retail trade or retail business wherein the primary purpose is the selling of goods (excluding refreshments other than light refreshments) by retail, and without prejudice to the generality of the foregoing includes a building used for the purposes of a hairdresser, undertaker, ticket agency or receiving office for goods to be washed, cleaned or repaired, or for other purposes appropriate to a shopping area, but does not include a building used as an amusement arcade, pin-table saloon, funfair, garage, petrol filling station, hotel or premises licensed for the sale of intoxicating liquors for consumption on the premises, and for the purposes of this definition the expression " light refreshments " means eatables not cooked on the premises, and beverages;

" unadopted street " means a street as defined by the Public Health Acts and not being a highway repairable by the inhabitants at large;

" unclassified road " means a road other than a trunk or classified road.

(2) The Interpretation Act, 1889, shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

Permitted development.

3.—(1) Subject to the subsequent provisions of this Order, development of any class specified in the First Schedule to this Order is permitted by this Order and may be undertaken upon land to which this Order applies, without the permission of the local planning authority or the Minister:

Provided that the permission granted by this Order in respect of any such class of development shall be subject to any condition or limitation imposed in the said First Schedule in relation to that class, and neither such permission nor any permission granted on an application made in pursuance of any such condition or limitation shall authorise any development (other than development of Class XII) which:—

(*a*) consists of the formation, laying out or alteration of a means of access to any road used by vehicular traffic, other than

  (i) the formation, laying out or alteration of a means of access for pedestrians only to an unclassified road; or

  (ii) the alteration for agricultural purposes of a means of access, used for those purposes, to a road which is neither a trunk road nor a road classified in Class I or Class II by the Minister of Transport under the Ministry of Transport Act, 1919; or

(*b*) obstructs the view of persons using any road used by vehicular traffic at or near any bend, corner, junction or intersection so as to be likely to cause danger to such persons.

(2) Nothing in this article or in the First Schedule to this Order shall operate so as to permit any development contrary

to a condition imposed by any permission granted or deemed to be granted under Part III of the Act on an application.

(3) Any development of Class XII authorised by an Act or order subject to the grant of any consent or approval shall not be deemed for the purposes of this Order to be so authorised unless and until that consent or approval is obtained; and in relation to any development of Class XII authorised by any Act passed or order made after the appointed day, the foregoing provisions of this Article shall have effect subject to any provision to the contrary contained in the Act or order.

Directions restricting permitted development.

4.—(1) If either the Minister or the local planning authority is satisfied that it is expedient that development of any of the classes specified in the First Schedule to this Order should not be undertaken in any particular area, or that any particular development of any of those classes should not be undertaken, unless permission is granted on an application in that behalf, the Minister or the local planning authority may direct that the permission granted by Article 3 of this Order shall not apply to:—

(*a*) all or any development of all or any of those classes in any particular area specified in the direction, or

(*b*) any particular development, specified in the direction, falling within any of those classes;

Provided that in the case of development of Class XII no such direction shall have effect in relation to development authorised by any Act passed after the commencement of this Order or by any Order requiring the approval of both Houses of Parliament approved after that date.

(2) A direction by a local planning authority under this Article shall require the approval of the Minister and the Minister may approve the direction with or without modifications.

(3) Notice of any direction specifying any particular area given or approved by the Minister under head (*a*) of paragraph (1) of this Article shall be published by the local planning authority in at least one newspaper circulating in the locality in which the area is situate and, unless the Minister otherwise directs, on the same or a subsequent date in the London Gazette, and such notice shall contain a concise statement of the effect of the direction and name a place or places where a copy thereof and of a map defining the area to which it

relates may be seen at all reasonable hours: and any such direction shall come into force on the date on which notice thereof is first published.

(4) Notice of any direction specifying any particular development given or approved by the Minister under head (*b*) of paragraph (1) of this Article shall be served by the local planning authority on the owner and occupier of the land affected, and any such direction shall come into force on the date on which notice thereof is served on the occupier, or if there is no occupier, on the owner.

(5) Any direction in force immediately before the coming into force of this Order under Article 5 or Article 6 of the Town and Country Planning (General Interim Development) Order, 1946, shall, in so far as it relates to development permitted by this Order, continue in force and have effect as if it were a direction given under this Article, of which notice had been duly published or served, as the case may be.

(6) No direction given or having effect under this Article shall have effect in relation to the carrying out in case of emergency of any development specified in the First Schedule to this Order, or, unless such direction specifically so provides, to the carrying out by statutory undertakers of any of the following operations:—

(*a*) maintenance of bridges, buildings and railway stations;

(*b*) alteration and maintenance of railway track, and provision and maintenance of track equipment, including signal boxes, signalling apparatus and other appliances and works required in connection with the movement of traffic by rail;

(*c*) maintenance of docks, harbours, quays, wharves, canals and towing paths;

(*d*) provision and maintenance of mechanical apparatus or appliances (including signalling equipment) required for the purposes of shipping or in connection with the embarking, loading, discharging or transport of passengers, livestock or goods at a dock, quay, harbour, bank, wharf or basin;

(*e*) any development required in connection with the improvement, maintenance or repair of watercourses or drainage works.

Applications for permission.

5.—(1) Applications for permission for development made to a local planning authority shall be made in accordance with any regulations under s. 102 of the Act for the time being in force.[1]

(2) On receipt of any such application the local planning authority shall send to the applicant an acknowledgement thereof in the terms (or substantially in the terms) set out in Part I of the Second Schedule hereto.

(3) The period within which the local planning authority shall give notice to the applicant of their decision or of the reference of the application to the Minister shall be the following period from the date of receipt of the application, namely :

(*a*) in the case of an application referred to in paragraph 1 of Class XIX of the First Schedule hereto, eighteen months ;

(*b*) in the case of an application for permission for development affecting trunk roads, three months ; and

(*c*) in any other case, two months,

or such extended period as may be agreed upon in writing between the applicant and the local planning authority.

(4) Every such notice shall be in writing, and where the local planning authority decide to grant permission subject to conditions or to refuse permission, they shall state their reasons in writing, and send with the decision a notification in the terms (or substantially in the terms) set out in Part II of the Second Schedule hereto.

(5) Where a local planning authority grant permission for any development either unconditionally or subject to conditions, that authority shall, if an application to the Central Land Board for the making of a determination of development charge was attached to the application for such permission, forthwith furnish to the Central Land Board a copy of the application for such permission, and of the plans or other documents submitted therewith, a copy of such permission, and copies or extracts from any correspondence explaining or qualifying the application or the permission.

(6) A local planning authority shall also furnish to the Minister and to such other persons as may be prescribed by directions given by the Minister under this Order, such information as may be so prescribed with respect to applications for permission made to them, including information as to the manner in which any such application has been dealt with.

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[1] See the Town and Country Planning (Making of Applications) Regulations, 1948, *ante*, p. 82.

Directions restricting the grant of permission.

6.—(1) The Minister may give directions restricting the grant of permission by a local planning authority during such period as may be specified in the directions, in respect of any such development or in respect of development of any such class, as may be so specified.

(2) A local planning authority to which a direction has been given under this Article shall, during the period specified in the direction, deal with applications for permission for development to which such direction relates in such manner as to give effect to the terms of the direction.

Special provisions as to permission for development affecting trunk roads.

7.—(1) Before granting permission for development affecting trunk roads, whether unconditionally or subject to conditions, a local planning authority shall consult with the Minister of Transport, to whom they shall notify receipt of the application on such form as may be issued for the purpose by the Minister of Transport.

(2) On receipt of any application for permission for development affecting trunk roads, the local planning authority shall, in addition to sending to the applicant an acknowledgment in accordance with paragraph (2) of Article 5, notify the applicant that the application cannot be dealt with except after consultation with the Minister of Transport.

(3) The Minister of Transport may give directions restricting the grant of such permission by the local planning authority, and the local planning authority shall deal with the application in such manner as to give effect to the terms of the direction.

Development not according with the development plan.

8. A local planning authority may in such cases and subject to such conditions as may be prescribed by directions given by the Minister under this Order grant permission for development which does not accord with the provisions of the development plan.

Consultation as to applications for permission.

9.—(1) Before granting permission for development in any of the following cases, whether unconditionally or subject to conditions, a local planning authority shall consult with the following authorities or persons, namely :—

(*a*) where it appears to the local planning authority that the development is likely to affect land in the area of any neighbouring local planning authority, with that authority;

(*b*) where it appears to the local planning authority that the development is likely to create or attract traffic which will result in a material increase in the volume of traffic entering or leaving a trunk road or using a level crossing over a railway, with the Minister of Transport;

(*c*) where the development involves the formation, laying out or alteration of any means of access to a road (other than a trunk road) for which the local planning authority are not also the local highway authority, with the local highway authority concerned;

(*d*) where the development consists of the erection of a building (other than an alteration, extension or re-erection of an existing building or the erection of a building of a temporary character) in an area of proposed coal working notified by the National Coal Board to the local planning authority, with the National Coal Board;

(*e*) where the development is of land which is situate within two miles from Windsor Castle, Windsor Great Park, or Windsor Home Park, or which is within half a mile from any other Royal Palace or Park, and might affect the amenities of that Palace or Park, with the Minister of Works;

(*f*) in relation to land in a Metropolitan Borough, where the development

  (i) would, whether in accordance with the development plan or not, conflict materially with existing development in the locality in which the land is situate, or

  (ii) would conflict with proposals to construct or widen streets notified to the local planning authority by that Borough,

with the Council of that Borough.

(2) Before refusing permission or imposing any conditions upon the grant of permission for any development of land for the purposes of agriculture, a local planning authority shall consult with the County Agricultural Executive Committee constituted under the Agriculture Act, 1947, for the area in which the land is situate.

(3) The Minister may give directions to a local planning authority requiring that authority to consult with the authorities, persons or bodies named in such directions in any case or class of case which may be specified in such directions and before determining any application for permission in any such case or class of case, the local planning authority shall enter into consultation accordingly.

(4) Where under this Article a local planning authority are required to consult with any authority, person or body as to any application, they shall give not less than 14 days' notice to such authority, person or body that such application is to be taken into consideration, shall not determine the application until after the expiration of the period of such notice, and shall, in determining the application, take into account any representations received from such authority, person or body.

Reference of applications to the Minister.

10. On referring to the Minister any application for permission to develop land pursuant to a direction given by the Minister under section 15 of the Act, a local planning authority shall serve on the applicant notice of the terms of the direction and of any reasons given by the Minister for issuing the direction, and such notice shall inform the applicant that the application has been referred to the Minister, and shall contain a statement that the Minister will, if the applicant so desires, afford to the applicant an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose, and that the decision of the Minister on the application will be final.

Appeals.

11.—(1) Any person who desires to appeal

(*a*) against a decision of a local planning authority refusing permission to develop land or granting permission subject to conditions, or

(*b*) on the failure of a local planning authority to give notice of their decision or of the reference of the application to the Minister

shall give notice of appeal to the Minister within one month of receipt of notice of the decision or of the expiry of the appropriate period specified in paragraph (3) of Article 5 of this Order, as the case may be, or such longer period as the

Minister may allow, and shall notify the local planning authority that an appeal has been made.

(2) Such person shall also furnish to the Minister a copy of the following documents, or where the appeal is against a refusal of permission and an application for determination of development charge has been made to the Central Land Board in respect of the same development, two copies thereof :—

(i) the application made to the local planning authority;

(ii) all relevant plans, drawings and particulars submitted to them;

(iii) the notice of the decision, if any;

(iv) all other relevant correspondence with the local planning authority.

Register of applications.

12.—(1) Every local planning authority shall keep a register containing the following information, in respect of all land within their area, namely :—

(*a*) particulars of any application for permission for development made to them in respect of any such land, including the name and address of the applicant, the date of the application, and brief particulars of the development forming the subject of the application;

(*b*) particulars of any direction given under the Act or this Order in respect of the application;

(*c*) the decision (if any) of the local planning authority in respect of the application and the date of such decision;

(*d*) the date and effect of any decision of the Minister in respect of the application, whether on appeal or on a reference under Section 15 of the Act.

(2) Such register shall include an index, which shall be in the form of a map unless the Minister approves some other form, for enabling a person to trace any entry in the register.

(3) Such register may be kept either at the office of the local planning authority or, in relation to the City of London or any county district within the area of the local planning authority, at a convenient place within the said City or the county district affected, as the case may be.

Directions and notices.

13.—(1) Any power conferred by this Order to give a direction shall be construed as including power to cancel or vary the direction by a subsequent direction.

(2) Any notice to be served or given under this Order may be served or given in the manner prescribed by s. 105 of the Act and by any regulations made under that section.

Saving.

14. Nothing in this Order shall apply to any permission which is deemed to be granted under Section 32 or Section 35 of the Act.

Article 3.

FIRST SCHEDULE

Permitted Development

Class I. Development within the curtilage of a dwellinghouse.

The erection or construction and the maintenance, improvement or other alteration, within the curtilage of any dwellinghouse, of:—

(i) any building or work (other than a dwelling or a garage) ancillary to, but not forming part of, or permanently attached to, a dwellinghouse, and required for any purpose incidental to the enjoyment of the dwellinghouse as such; and

(ii) shelters for keeping poultry, livestock, bees, pet animals or birds for the domestic needs or personal enjoyment of the occupants of the dwellinghouse;

Provided that the height of any such building or shelter does not exceed 10 feet, and that its cubic capacity does not exceed 1,000 cubic feet.

Class II. Gates and fences, etc.

The erection or construction of gates, fences, walls, or other means of enclosure, not exceeding seven feet in height and not affording access to or abutting on a highway, and the maintenance and repair of any gates, fences, walls or other means of enclosure.

Class III. Changes of use.

Development consisting of a change of use to:—

(*a*) use as a light industrial building as defined by the Town and Country Planning (Use Classes) Order, 1948,[2] from use as a general industrial building as so defined;

(*b*) use as any type of shop from use as
  (i) a fried fish shop;
  (ii) a tripe shop;
  (iii) a shop for the sale of pet animals or birds; or
  (iv) a cats-meat shop.

Class IV. Temporary uses.

The use of land unoccupied by buildings for any purpose for a period or periods not exceeding 28 days in total in any calendar year, and the erection or placing of moveable structures on the land for the purposes of that use.

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[2] SI 1948, No. 954, *ante*, p. 145.

Class V. Uses by members of recreational organisations.

The use of land, unoccupied by buildings and not within the curtilage of a dwellinghouse for the purposes of recreation or instruction by members of an organisation which holds a certificate of exemption granted by the Minister of Health under Section 269 of the Public Health Act, 1936, and the erection or placing of tents or caravans on the land for the purposes of that use.

Class VI. Agricultural buildings, works and uses.

1. The erection or construction on land used for the purposes of agriculture of:—
   - (i) separate buildings for such purposes permanently affixed to the ground and having a superficial area of not more than 300 square feet and a maximum height (measured to the ridge thereof, if any) of 13 feet, being not more than 150 feet from the group of principal farm buildings occupied with such land and not for human habitation;
   - (ii) buildings for such purposes not permanently affixed to the ground (including shelters for livestock, but not buildings for human habitation);
   - (iii) silos not exceeding 14 feet in height;
   - (iv) wells and reservoirs, or water tanks not exceeding 14 feet in height nor 20,000 gallons in capacity;
   - (v) straw pulping plants, hop-pole tarring plants, sheep dipping accommodation, and lambing pens;
   - (vi) structures mainly or wholly of poles, straw, bracken, hurdles, or like material;

and the formation, alteration and maintenance of private ways on such land.

2. The erection or construction and the maintenance, improvement or other alteration of roadside stands for milk churns, except where they would abut on any trunk or classified road.

3. The winning and working, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use, including the fertilisation of the land so used and the maintenance, improvement or alteration of buildings or works thereon which are occupied or used for the purposes aforesaid.

Class VII. Forestry buildings and works.

The erection or construction and the maintenance, improvement or other alteration on land used for the purposes of forestry (including afforestation) of buildings (not constructed of stone, concrete or brick) having a superficial area of not more than 300 square feet and a maximum height (measured to the ridge thereof, if any) of 13 feet, to be used as offices, tool or store sheds, workshops, or shelters, in connection with forestry, and not for human habitation; and the formation, alteration and maintenance of private ways on such land.

Class VIII. Development for industrial purposes.

1. Development of the following descriptions, carried out by an industrial undertaker on land used (otherwise than (i) in contravention of previous planning control or (ii) without planning permission granted or deemed to be granted under Part III of the Act) for the carrying

out of any industrial process, and for the purposes of such process, or on land used (otherwise than as aforesaid) as a dock, harbour or quay for the purposes of an industrial undertaking:—

(i) the provision, rearrangement or replacement of private ways or private railways, sidings or conveyors;

(ii) the provision or rearrangement of sewers, mains, pipes, cables or other apparatus;

(iii) the installation or erection, by way of addition or replacement, of plant or machinery, or structures or erections of the nature of plant or machinery, not exceeding 50 feet in height or the height of the plant, machinery, structure or erection so replaced, whichever is the greater, provided that such plant, machinery, structure or erection does not substantially affect the external appearance of the premises of the undertaking.

2. The deposit by an industrial undertaker of waste material or refuse resulting from an industrial process on any land comprised in a site which was used for such deposit, otherwise than in contravention of previous planning control, on the appointed day, whether or not the superficial area or the height of the deposit is thereby extended.

Class IX.—Repairs to unadopted streets and private ways.

The carrying out of works required for the maintenance or improvement of an unadopted street or private way, being works carried out on land within the boundaries of the street or way.

Class X. Repairs to services.

The carrying out of any works for the purpose of inspecting, repairing or renewing sewers, mains, pipes, cables or other apparatus, including the breaking open of any land for that purpose.

Class XI. War damaged buildings, works and plant.

The rebuilding, restoration or replacement of buildings, works or plant which have sustained war damage so long as the cubic content immediately before the occurrence of such damage is not increased and such operations do not involve a material alteration from the external appearance immediately before the occurrence of such damage.

Class XII. Development under local or private Acts, or Orders.

Development authorised by any local or private Act of Parliament or by any Order approved by both Houses of Parliament, being an Act or Order which designates specifically both the nature of the development thereby authorised and the land upon which it may be carried out;

Provided that permission shall be required in respect of the erection, construction, alteration or extension of any building, including any bridge, aqueduct, pier or dam but not including any other structure or erection, or the formation, laying out or alteration of a means of access to any road used by vehicular traffic, but the local planning authority shall not refuse permission and shall not impose conditions upon the grant thereof, unless they are satisfied that it is expedient so to do on the ground that:—

(*a*) the design or external appearance of such building, bridge, aqueduct, pier or dam would injure the amenity of the neighbourhood and is reasonably capable of modification so as to conform with such amenity; or

(b) in the case of a building, bridge, aqueduct, pier or means of access, the erection, construction, formation, laying out, alteration or extension, ought to be, and could reasonably be, carried out elsewhere on the land.

Class XIII. Development by Local Authorities.

1. The erection, construction, maintenance, improvement or other alteration by a Local Authority of:—

(i) such small ancillary buildings, works and equipment as may be required for the purposes of any allotments, cemeteries, parking places, open spaces, playing fields, parks, recreation grounds, gardens, or public walks and pleasure grounds belonging to or maintained by them;

(ii) information kiosks, passenger shelters, public shelters and seats, telephone boxes, fire alarms, public drinking fountains, horse troughs, refuse bins or baskets, barriers for the control of persons waiting to enter public vehicles, and such other similar structures or works as may be required in connection with the operation of any public service administered by them.

2. The deposit by a Local Authority of waste material or refuse on any land comprised in a site which was used for that purpose, otherwise than in contravention of previous planning control, on the appointed day, whether or not the superficial area or the height of the deposit is thereby extended.

Class XIV. Development by Local Highway or Improvement Authorities.

The erection, construction, maintenance, improvement or other alteration by a Local Highway Authority or an Improvement Authority of buildings or works reasonably required in connection with the use, safety or enjoyment of roads.

Class XV. Development by Drainage Authorities.

Any development by a Drainage Authority within the meaning of the Land Drainage Act, 1930, in, on or under any watercourse or drainage works, in connection with the improvement or maintenance of such watercourse or drainage works.

Class XVI. Development by Sewerage Authorities.

Any development by a Sewerage Authority within the meaning of Part II of the Public Health Act, 1936, or by the Common Council of the City of London, being development below the surface of the ground required in connection with the provision, improvement or maintenance of sewers.

Class XVII. Development by Educational Authorities.

The erection on educational land by an Educational Authority with the approval of the Minister of Education of temporary buildings, supplied by the Minister of Works, for emergency accommodation: and the alteration, with similar approval, of existing educational buildings for emergency accommodation.

Class XVIII. Development by Statutory Undertakers.

A. Railway or Light Railway Undertakings.

Development required in connection with the movement of traffic by rail and carried out by the undertakers or their lessees in, on, over or under the operational land of the undertaking *except* the construction of railways and the construction or erection, or the reconstruction or alteration so as materially to affect the design or external appearance thereof, of any railway station or bridge, or of any residential building, office, or building to be used for manufacturing or repairing work, which is not situate wholly within the interior of a railway station.

B. Dock, Harbour, Water Transport, Canal or Inland Navigation Undertakings.

1. Development required for the purposes of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock or harbour, or the movement of traffic by canal or inland navigation, or by any railway forming part of the undertaking, and carried out by the undertakers or by their lessees in, on, over or under the operational land of the undertaking *except* the construction or erection, or the reconstruction or alteration so as materially to affect the design or external appearance thereof, of bridges or other buildings (not being structures or erections required in connection with the handling of traffic).

2. The use of any land for the spreading of dredgings.

C. Water or Hydraulic Power Undertakings.

Development required for the purposes of the undertaking of any of the following descriptions, that is to say:—

(i) the laying underground of mains, pipes, or other apparatus;

(ii) the improvement, maintenance or repair of watercourses or land drainage works;

(iii) any other development carried out in, on, over or under the operational land of the undertaking *except*:—

 (*a*) the erection, or the reconstruction or alteration so as materially to affect the design or external appearance thereof, of buildings,

 (*b*) the installation or erection, by way of addition or replacement, of any plant or machinery, or structures or erections of the nature of plant or machinery, exceeding 50 feet in height or the height of the plant, machinery, structure, or erection so replaced, whichever is the greater.

D. Gas Undertakings.

Development required for the purposes of the undertaking of any of the following descriptions, that is to say:—

(i) the laying underground of mains, pipes, or other apparatus;

(ii) the installation in a gas distribution system of gas valve governor houses not exceeding (except when constructed underground elsewhere than under a road) 600 cubic feet in capacity;

- (iii) any other development carried out in, on, over or under operational land of the undertaking *except*:—
  - (*a*) the erection, or the reconstruction or alteration so as materially to affect the design or external appearance thereof, of buildings;
  - (*b*) the installation of any plant or machinery, or structures or erections of the nature of plant or machinery, exceeding 50 feet in height, or capable, without addition, of being extended to a height exceeding 50 feet;
  - (*c*) the replacement of any plant or machinery, or structures or erections of the nature of plant or machinery, to a height exceeding 50 feet or the height of the plant, machinery, structure or erection so replaced, whichever is the greater.

E. Electricity Undertakings.

Development required for the purposes of the undertaking of any of the following descriptions, that is to say:—

- (i) the laying underground of pipes, cables, or other apparatus;
- (ii) the installation in an electrical transmission line of feeder pillars, or transforming or switching kiosks or chambers not exceeding (except when constructed underground elsewhere than under a road) 600 cubic feet in capacity;
- (iii) the installation of service lines from an electrical transmission line;
- (iv) any other development carried out on, in, over or under the operational land of the undertaking *except*:—
  - (*a*) the erection, or the reconstruction so as materially to affect the design or external appearance thereof, of buildings; or
  - (*b*) the installation or erection, by way of addition or replacement, of any plant or machinery, or structures or erections of the nature of plant or machinery, exceeding 50 feet in height or the height of the plant, machinery, structure or erection so replaced, whichever is the greater.

F. Tramway or Road Transport Undertakings.

Development required for the purposes of the undertaking of any of the following descriptions, that is to say:—

- (i) the installation of posts, overhead wires or transformer boxes not exceeding 600 cubic feet in capacity in, on, over or adjacent to a road for the purpose of supplying current to public vehicles;
- (ii) the installation of tramway tracks, conduits and drains and pipes in connection therewith for the working of tramways;
- (iii) the installation of telephone cables and apparatus used for the operation of public vehicles;
- (iv) the erection or construction, and the maintenance, improvement or other alteration of passenger shelters and barriers for the control of persons waiting to enter public vehicles;

(v) any other development carried out in, on, over or under the operational land of the undertaking, *except* :—
- (*a*) the erection, or the reconstruction or alteration so as materially to affect the design or external appearance thereof, of buildings;
- (*b*) the installation or erection, by way of addition or replacement, of any plant or machinery, or structures or erections of the nature of plant or machinery, exceeding 50 feet in height, or the height of the plant, machinery, structure or erection so replaced, whichever is the greater.

G. *Lighthouse Undertakings.*

Development required for the purposes of the exercise of the functions of a General Lighthouse Authority under the Merchant Shipping Act, 1894.

Class XIX. Development by Mineral Undertakers.

1. Where mining operations have been carried out in any land at any time on or after the 1st day of January, 1946, and before the appointed day
- (*a*) in conformity with the provisions of a planning scheme or of permission granted thereunder or in accordance with permission granted at any time before the 22nd day of July, 1943, by or under an interim development order and in force immediately before the appointed day; or
- (*b*) under Article 4 of the Town and Country Planning (General Interim Development) Order, 1946,

the continuation of such mining operations in adjoining land (where they form a continuous operation in relation to the land first mentioned) for a period of four months from the appointed day (or for such longer period not exceeding six months from the appointed day as may be allowed in writing in any particular case by the local planning authority); and if during that period an application under Part III of the Act for permission to carry out those operations is made, or by virtue of paragraph 1 of the Tenth Schedule is treated as having been made, the continuation of such operations until the application (or any appeal in respect thereof) has been dealt with.

2. The erection, alteration or extension by mineral undertakers on land in or adjacent to and belonging to a quarry or mine comprised in their undertaking of any building, plant or machinery, or structure or erection in the nature of plant or machinery, which is required in connection with the winning or working of minerals other than coal in pursuance of permission granted or deemed to be granted under Part III of the Act, or which is required in connection with the treatment or disposal of such minerals;

Provided that permission shall be required for the erection, alteration or extension of a building but the local planning authority shall not refuse permission and shall not impose conditions upon the grant thereof, unless they are satisfied that it is expedient so to do on the ground that
- (*a*) the erection, alteration or extension of such building would injure the amenity of the neighbourhood and modifications can

reasonably be made or conditions can reasonably be imposed in order to avoid or reduce the injury; or

(*b*) the proposed building or extension ought to be, and can reasonably be, sited elsewhere.

Class XX. Development by the National Coal Board.

Development of the following descriptions carried out by the National Coal Board, or their lessees or licensees:—

(1) The winning and working underground, in a mine commenced before the appointed day, of coal or other minerals mentioned in paragraph 1 of the First Schedule to the Coal Industry Nationalisation Act, 1946, and any underground development incidental thereto.

(2) Any development required in connection with coal industry activities as defined in Section 63 of the Coal Industry Nationalisation Act, 1946, and carried out in the immediate vicinity of a pithead;

Provided that permission shall be required in respect of the erection, alteration or extension of a building, but the local planning authority shall not refuse permission and shall not impose conditions on the grant thereof unless they are satisfied that it is expedient so to do on the ground that:—

(*a*) the erection, alteration or extension of such building would injure the amenity of the neighbourhood and modifications can reasonably be made or conditions can reasonably be imposed in order to avoid or reduce the injury; or

(*b*) that the proposed building or extension ought to be, and can reasonably be, sited elsewhere.

(3) The deposit of waste materials or refuse resulting from colliery production activities as defined by paragraph 2 of the First Schedule to the Coal Industry Nationalisation Act, 1946, on land comprised in a site used (otherwise than in contravention of previous planning control) for the deposit of waste materials or refuse on the appointed day, whether or not the superficial area or the height of the deposit is thereby extended.

Class XXI. Development previously sanctioned by a Government Department.

1. Development by a local authority or by statutory undertakers which was sanctioned by any government department before the 1st day of May, 1945, and on which work had been commenced and was proceeding on the appointed day.

2. The erection of any overhead line for the supply of electricity authorised by the Minister of Fuel and Power before the appointed day.

Article 5.

SECOND SCHEDULE

PART I

Notification to be sent to Applicant on receipt of his Application.

Your application for planning permission dated (insert date) has been received and if on (insert date of expiry of the appropriate period under Article 5 (3)) you have not been given notice by the local planning authority of their decision, you are entitled, unless the application has already been referred by the authority to the Minister of Town and Country Planning, to appeal to the Minister in accordance with Section 16 of the Town and Country Planning Act, 1947, by notice served within one month from that date. You may, however, by agreement in writing with the local planning authority, extend the period within which the decision of the authority is to be given.

PART II

Notification to be sent to Applicant on refusal of planning permission or on the grant of permission subject to conditions. (To be endorsed on notices of decision.)

(1) If the Applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may by notice served within one month of the receipt of this notice, appeal to the Minister of Town and Country Planning in accordance with Section 16 of the Town and Country Planning Act, 1947. The Minister is not, however, required to entertain such an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the provisions of Section 14 of the Act and of the Development Order and to any directions given under the Order.

(2) If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Minister of Town and Country Planning, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on [the Council of the county borough or county district in which the land is situated]* a purchase notice requiring that Council to purchase his interest in the land in accordance with Section 19 of the Town and Country Planning Act, 1947.

(3) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused, or granted subject to conditions by the Minister on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in sections 20 and 79 of the Town and Country Planning Act, 1947.

**Note.*—In relation to land in the Administrative County of London the words in brackets should be modified to suit the particular case. See Section 114 (2) of the Act.

Anomalies in the Operation of Part V of the Act of 1947

By R. D. Stewart-Brown, Barrister-at-Law

It is inevitable that a novel and highly complicated piece of legislation should give rise to minor anomalies, and this article is not intended to cast any reflection upon the draftsmen of the Town and Country Planning Act, 1947, who by common consent have shown outstanding skill and ingenuity. Where, however, practical experience of the Act brings to light such anomalies, it is desirable to call attention to them, particularly when an apparent inequity can be partially remedied by regulations yet to be published. This article deals with two points relating to compensation for land compulsorily acquired, *viz.*, first, compensation for land "ripe for development", and, secondly, the application of the nominal lease to land acquired, when an element of development value is to be taken into account in assessing compensation.

Compensation for Land "Ripe for Development"

The sidenote to s. 80 of the Act of 1947 ("land ripe for development before the appointed day") is misleading to the casual reader. In many cases land which in ordinary language is "ripe for development" at the appointed day will not fall within the class of land to which preferential treatment is accorded by the section. The point to which attention is here drawn, however, is not the limited scope of the section but the fact that the measure of compensation for the acquisition of land of a class falling within the section differs according to the time when the notice to treat is served and may be affected by delay in the granting of the Minister's certificate.

To take a concrete example, let us imagine a piece of land provided with roads, sewers and other services and with a valid planning permission granted before January 7, 1947, for housing development; before the building of houses has started, the local authority obtains a compulsory purchase order. If notice to treat is served after the appointed day and after the Minister has issued his certificate under s. 80, no difficulty arises. Since the effect of the certificate is to exempt the owner from development charge as respects the development for which the land is " ripe ", paragraph (*b*) of s. 51 (4) is brought into operation, and the development value of the land is taken into account in assessing compensation. The owner will of course have foregone any right to claim a share in the global fund of £300 million.

If the notice to treat is served after the appointed day, but the Minister has not issued his certificate at the date of the notice to treat, the position is not so clear. If the development which the acquiring authority propose to carry out is not substantially the same as that for which planning permission has been granted, the Minister will probably postpone the issue of a certificate pending proceedings for revocation of that permission, and if the permission is revoked the Minister is not required to certify (proviso to s. 80 (1)). The consequence will be that the owner will receive only the restricted value as compensation and will be left to pursue an uncertain claim on the global fund. Even if the Minister does so certify in such circumstances, it is at least doubtful whether his certificate can be regarded as being effective at the date of the notice to treat, which is the relevant date for the purpose of assessing compensation. If the certificate issued is not effective at that date, it will of course put the owner in an even worse position, since he will have lost not only compensation for development value but also his claim on the global fund.

If notice to treat is served before the appointed day, the owner retains his claim on the global fund by virtue of s. 91, but there appears to be no means by which he can recover compensation on the basis of development value in exchange for abandoning his claim on the global fund. There is no provision in s. 55 of the Act (which applies to cases where notice to treat is served before the appointed day) similar to s. 51 (4), and under s. 55 land " ripe for development " cannot be treated in any different manner from other land.

It follows, therefore, that the date of the notice to treat is a vital factor, and a different measure of compensation will apply to the same land if the notice to treat is served before the appointed day or after the appointed day and after the Minister has given his certificate. This apparent unfairness could be lessened to some extent if preferential treatment were accorded, in sharing out the global fund, to land falling within

s. 80, but not so certified before the date of the notice to treat. It is obviously in an owner's interest to make his application for a certificate under s. 80 at the earliest possible time.

Application of notional lease when development value may be taken into account

The second point to which attention is drawn can best be illustrated by an example. Assume that a freehold bomb-damaged site qualifying for a value payment is compulsorily acquired, and at the date of the notice to treat it is being used as a car-park. In assessing compensation it is assumed that the owner will be given planning permission to rebuild the buildings destroyed and to exceed the original cubic content by one-tenth without payment of development charge (s. 51 (2) or s. 55 and the Third Schedule). The value of the land for compensation will be almost wholly attributable to this assumed right to develop. The land must, however, be regarded as subject to a notional lease under s. 52 until 1954 and presumably the rent payable by "a tenant in occupation" under a lease by virtue of which "the tenant would be liable to pay all usual tenant's rates and taxes and to bear the cost of repairs and insurance and other expenses, if any, necessary to maintain the land in the state in which it was at the date of the notice to treat" would be the rent payable by a tenant of the land for the purpose of a car-park. The compensation will, therefore, have to be reduced, in that the development value of the land cannot be realised until after 1954. A similar position will arise in any case where development rights attach to the land for the purpose of compensation, except where the land is "agricultural property" or occupied by a person protected by the Rent Restriction Acts and is thus excluded from s. 52. If the owner of the land in the example cited obtained planning permission for a development other than making good war damage and paid a development charge (which would be increased by the existing scarcity of accommodation), then on a compulsory acquisition the development of his land would still be regarded as postponed till 1954, though the development charge would have been assessed on the prospect of immediate development.

Where land, the value of which largely depends on the assumed right to develop, is not being used at the date of the notice to treat, and is not capable of any beneficial occupation for which a rent would be paid, a Court might well regard s. 52 as inapplicable, but this is by no means clear. The anomaly arises from the fact that s. 52 is so worded that it applies, whether or not there is any " special value attributable to vacant possession ", whereas, as the sidenote indicates, it was only intended to apply where there was existing accommodation with such a special value. There appears to be no way out of this difficulty and an owner of such land likely to be affected by immediate compulsory acquisition might be well advised not to let his land for temporary use, and to rely on a Court construing s. 52 as I have indicated.

Ministry of Town and Country Planning Circulars and Memoranda

Circular No. 40, dated April 16, 1948. Survey for Development Plans (3d.).

Circular No. 41, dated April 14, 1948. Explanatory of the T. & C. P. (Making of Applications) Regulations, 1948 (2d.).

Circular No. 42, dated May 12, 1948. Notifying the issue of the T. & C. P. (Uses Classes) Order, 1948, and T. & C. P. (Uses Classes for Third Schedule Purposes) Order, 1948 (1d.).

Circular No. 43, dated May 6, 1948. Notifying the issue of the Claims for Depreciation of Land Values Regulations, 1948 (1d.).

Circular No. 44, dated May 12, 1948. Notifying the issue of the T. & C. P. (General Development) Order, 1948 (1d.).

Memorandum, dated May, 1948. Explanatory of the Uses Classes Order above referred to (2d.).

Private Rights and Ministerial Action

By T. A. Blanco White, Barrister-at-Law

I. General Principles on which the Courts Intervene (*ante*, p. 32).
II. Objections to Planning (*ante*, p. 86).
III. **Development of One's Own Land.**
IV. Opposition to Compulsory Purchase.
V. Disputes about Compensation.

III. Development of One's Own Land

1. There is in general, under the new planning law, no enforceable right to develop one's own land. It would indeed be surprising if there were: for there is no enforceable right to retain existing works or buildings, or an existing use of land. The whole structure of the Town and Country Planning Act, 1947, is to place the use to which land is put completely within the discretion of the Ministry and the local planning authority; the differences only go to procedure and to compensation. In practice, there is of course a vast difference between the owner of an existing building, whose building can only be taken away from him after complex procedure under s. 26 and on payment of compensation, and the owner of land who wishes to build on it and requires planning permission under s. 12 before he can do so; but it should never be forgotten that if the local planning authority and the Ministry want to get rid of a building, they can.[1] If the appropriate procedure is adopted, the Courts cannot intervene, and if the wrong procedure is adopted a second attempt will probably succeed.

Development in the Absence of Action to Prevent it

2. In the same way, great practical importance attaches to those exceptional cases where operations can be carried out on land without the need for going through the normal

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[1] In many cases, the local planning authority will be bound by regulations which prevent them from taking action to deal with existing buildings, but those regulations will not give landowners any enforceable rights and so do not belong to the subject of the present articles.

procedure of obtaining planning permission and paying a development charge. It is to the position arising in such exceptional cases that the present article is primarily directed.

The exceptions fall into four classes from the point of view of the owner's rights:

(i) Where the operation is not "development" within the meaning of s. 12.

(ii) Where planning permission is deemed to have been granted (*e.g.*, under s. 77 or s. 78), or is granted by a development order (*ante*, p. 148). It may be noted that the cases foreshadowed by s. 13, where a development order provides for the grant by a local planning authority of permission for development of a given class, might or might not form exceptions to the normal procedure at all.

(iii) Where there is a right to compensation under s. 20 and Sched. III, in the event of refusal of planning permission.

(iv) Where no development charge is payable.

3. In cases falling within the first two classes of exceptions, planning permission need not be obtained before the operation concerned is begun. If an operation does fall within such an exception, it will (so far as planning goes) be lawful to carry out that operation unless the local planning authority take positive action to prevent it. If, on the other hand, an operation does not fall within such an exception, but is nevertheless carried out, the local planning authority can at any time within four years—if they consider it expedient to do so—require the land to be restored to its original condition by means of an "enforcement notice" under s. 23. The landowner may then appeal to a Court of summary jurisdiction from which a further appeal lies to quarter sessions. Such appeals involve ordinary questions of fact and law; the only matter left to the discretion of the local planning authority (and so outside the purview of the Court) is whether or not to serve an enforcement notice in a case where they are entitled to do so. The question whether they are entitled to serve the notice is for the Court to decide. If any complicated question of law should arise, with which such Courts cannot adequately deal—and on an Act of this sort complicated questions of law may be not uncommon—there is nothing to stop the matter being taken to the High Court on a stated case. If at the end of it all it appears that the landowner acted on a mistaken view of the law or on a misapprehension as to the facts he could prove, this will of course be somewhat unfortunate for him, particularly if the cost of carrying out

the original operation and then restoring the land should happen to be large.

Application to Determine Whether Permission Required

4. If the legal position is not clear, and the operations concerned are costly, therefore, crucial importance attaches to the question of settling the legal position before any substantial expenditure is incurred. One method of doing this is provided by s. 17, under which the local planning authority must on proper application, determine whether planning permission is required.

This s. 17 requires careful analysis. If the local planning authority acting under the section find that planning permission is not required, that finding is conclusive. If they find that permission is required, the landowner may appeal to the Minister, and if the Minister finds in his favour, again the finding is conclusive. If, however, the Minister finds against him on the appeal, he may reopen the question if, and only if, an enforcement notice is in due course served upon him and he appeals to the Courts against the notice; otherwise, the finding is again conclusive. It is sometimes stated that there is an appeal to a Court of summary jurisdiction from an adverse finding by the Minister under s. 17, but that is not the case: it is only in and for the purpose of enforcement proceedings that the Minister's decision is not final. Nor apparently can the matter be reopened at all, if the landowner fails to appeal to the Minister from the decision of the local planning authority.

5. Thus so long as an appeal is made from an adverse decision of the local planning authority, resort to s. 17 does not destroy a landowner's right ultimately to bring the question of planning permission before the Courts (though it may prejudice the position in other ways: see paras. 7, 14 and 15, below). In most cases, therefore, this section will solve the problem of how to get this question decided without first carrying out the putative development. If on the other hand the Ministry's decision is for any reason unlikely to be acceptable, some other way must be found.

6. Where the question turns on matters of fact, the position seems to be that in general there is no way. The Act expressly provides for such preliminary determinations to be made by the local planning authority and the Minister; it seems reasonably clear that provided the determinations are valid (as distinct from correct), the Courts are precluded from intervening, on the general principles set out in the first of these articles. In

a case of sufficient importance, however, it might be worth while bringing an action against the local planning authority for a declaration that they would not be entitled to serve an enforcement notice in respect of the proposed operation. It is not suggested that such an action would be likely to achieve any positive results, but until someone has tried, success will remain a possibility.

7. Where the dispute centres around a point of pure law, there is not the same difficulty: for in that case, a decision of an appropriate Court will be authoritative even though the Ministry and the local planning authority are not parties to the proceedings. Any of the usual methods for getting points of law decided will therefore suffice: if the landowner concerned is a company, for instance, an action by a shareholder to restrain the company from acting, on the ground that the proposed operation is illegal unless planning permission is first obtained. Alternatively, it may be possible and convenient to raise the matter in proceedings against the Central Land Board to compel assessment of a development charge : see final article of this series. In any such case, however, the action should be commenced before making any application under s. 17: for such an action would not be an enforcement proceeding under that section and consequently a determination under the section would be final for the purposes of the action. Even in a collusive action, the Court might be tempted to decide the case on that ground.

Action to Prevent Development

8. Returning to the four classes of exceptions mentioned in para. 2 above, there is a substantial difference between the first class (operation not "development") and the second class (development permission deemed to have been given, etc.).

In cases within the second class, it is still open to the local planning authority to revoke the permission given or deemed to have been given, on paying compensation for abortive expenditure. Alternatively, in cases where permission is given by a development order, there may be provision in the order for the local planning authority or the Minister to direct that the order shall not apply in a particular case. From the landowner's point of view—the position of the authority is a different matter—this would seem to differ from revocation only in procedure; though there are possibilities of complications if such a direction were made after the particular development concerned had been partly carried through.

In cases within the first class, on the other hand, the proposed operation would not be development, so that there would be no question of permission which could be revoked. To achieve the effect of revocation it would apparently be necessary to proceed, under s. 26, to impose upon the existing use conditions excluding the proposed operation, thus entitling the landowner to compensation even before the operation was carried out. (It has been emphasised already, that there is apparently always some way of stopping a landowner doing anything, provided the authorities concerned are prepared to compensate him.)

It may be noted as a possible disadvantage of preliminary proceedings under s. 17 (or otherwise), that they might stir a local planning authority into taking " evasive action " such as has been suggested in this paragraph.

9. In exceptional cases of the third class (refusal of permission with compensation) there is no enforceable right to develop even within the limitations mentioned above : that is to say, even in the absence of action by the local planning authority. The rights of the landowners concerned go purely to compensation. The fourth class will be dealt with in the last article of this series, in connection with development charges.

Attacking Planning Decisions

10. Decisions of the Minister and of the local planning authority on applications for planning permission can of course be attacked on the ground of irregularity, in accordance with the principles set out in the first of these articles. In practice, however, there seems to be little point in making such an attack. Indeed, there seems to be no object in so attacking any decision of the local planning authority : for by s. 16 (3), if the authority fails to decide on the application within a time to be prescribed, the decision is deemed in effect to have been adverse. The effect of success in a challenge to the validity of a decision would be that it would be quashed, with the result that s. 16 (3) would apply and a valid adverse decision would be deemed to have been given. Thus, the quashing of an adverse decision would necessarily remain without effect; the proper remedy for an adverse decision, valid or invalid, by the authority, is to appeal to the Minister.[2]

11. If a decision of the Minister were to be quashed, this

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[2] This argument naturally does not apply to proceedings aimed at quashing a favourable decision on someone else's application. Even in such a case, however, a quashed decision may not stay quashed: the applicant will be entitled to appeal to the Minister in accordance with s. 16 (3).

would have the effect of making it necessary for him to decide the case again. There seems, however, to be no case in which he could be compelled to give a favourable decision. In cases where there is power to grant permission at all (which where the Minister is concerned, means almost all cases), the grant is clearly a matter of discretion.[3] The Minister is required to "consider", *inter alia*, the provisions of the local development plan, but is not bound to allow development merely because it conforms to the plan: "considering" is a matter of procedure only. It may be added that even when the decision is made upon appeal from the local planning authority, the Minister does not appear to be required at any stage to act quasi-judicially: for by s. 16 (2), he may deal with the appeal as if he were dealing with the original application, and thus as if there were no question of a dispute between parties.

12. Where decisions upon applications under s. 17 are concerned, the position is rather different. The duty to decide upon such an application is clearly a typically quasi-judicial one, which should make it slightly easier to get the resulting decision quashed in certain cases. Further, since no questions of policy or of discretion are involved, the Court hearing the application to quash (normally on application for *certiorari*) could and might express a sufficiently definite opinion upon the merits of the case to make it unlikely that an adverse decision would again be reached, when the matter was reconsidered by the Minister after the quashing of the first decision. It should be noted, however, that the provisions of s. 16 (3) apply in this case too, and apparently again prevent the quashing of the local planning authority's decision having any real effect. It must also be remembered that a decision cannot be quashed merely because it is wrong, even if the error is one of law.

Enforcement Notices

13. The rights of a person against whom enforcement proceedings are taken have already been mentioned in paras. 3 and 4; they deserve closer analysis, however. An "enforcement notice" under s. 23 may be served on owner and occupier of the land concerned. If the notice is not complied with, the next step depends on whether the "development" objected to is an alteration in the state of the land (s. 24 (1)) or in the use to which it is put (s. 24 (3)). In the former case, the local

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[3] It is of course a matter of discretion under the present law, too: see *e.g.*, *R.* v. *East Kesteven R. D. C.*, [1947] 1 All E. R. 310, cited *ante*, p. 35.

planning authority may enter upon the land and restore it to its original state; the cost is recoverable from the then owner. In the latter, the remedy of the local planning authority is to prosecute for the statutory offence of acting, or causing or allowing action, in contravention of an enforcement notice. It is convenient to consider the two cases separately.

14. In the former case, it is provided that in " proceedings under this subsection ", no one who could have appealed against the notice and failed to do so may object to the validity of the notice on any ground that could have been raised in that appeal. The right of appeal concerned is given to those on whom the notice was served: thus this provision does not affect a subsequent owner. " Proceedings under this subsection " apparently means only an action by the local planning authority to recover the cost of removing the offending works, as distinct from (say) an action by the landowner to prevent interference with his land under colour of an invalid enforcement notice. (Such an action must surely be possible, to protect those upon whom the notice was not served and who consequently had no right of appeal against it.) On the other hand, none of these proceedings would be an " appeal to the Court " under the enforcement provisions of the Act, so that a decision under s. 17 would be final for the purposes of the proceedings. The effect could apparently be that where an invalid enforcement notice was not appealed against, the landowner concerned might successfully establish that the entry of the local planning authority on his land was unlawful, provided he was able to do so without relying on the fact that the alleged wrongful development did not need planning permission, but nevertheless he would have no defence to the authority's claim to recover the cost of their unlawful interference. The provisions of s. 24 (2), under which the sums so paid to the Authority would be deemed incurred " for the use and at the request of " whoever carried out the development concerned, seem admirably designed to complicate such cases still further, but this subsection is outside the scope of the present articles.

15. The provisions for prosecution in s. 24 (3) also have their peculiarities. The offence concerned is committed where there is a breach of a requirement existing " by virtue of " an enforcement notice; if an enforcement notice is invalid it presumably cannot found such a requirement. Thus the validity of the Notice can apparently be challenged where the local planning authority prosecute under this subsection, whether it was appealed against or not, but again subject to the point

that any decision under s. 17 will be final for the purposes of the prosecution. It would clearly be better, however, to appeal against the Notice.

In this case as in the case dealt with in para. 14, the transfer of land which is already subject to an enforcement notice may cause difficulty. It is not absolutely clear that a new occupier's ignorance of the Notice would be a defence under the subsection; while the old occupier, once successfully prosecuted, would on the strict wording of the subsection remain liable to a daily penalty so long as the new occupier continued the use complained of.

It may also be noted that it is not absolutely clear that ignorance of the Notice is a defence to prosecution under the subsection. On the strict wording, a person who had been convicted under the subsection would remain liable to a daily penalty if the use complained of was continued thereafter, even if he had lost the power of preventing that use. While the danger of further conviction in such circumstances would normally be slight, in this case as in the case dealt with in para. 14, the position of a person acquiring land which is already subject to an enforcement notice presents certain difficulties. It is indeed clear, that the proper way to challenge the validity of an enforcement notice, if its validity is to be challenged at all, is to appeal against it.

SUMMARY

16. The position may be summarised as follows:

(1) There is never any absolute right to carry out operations on land.

(2) Though in general prior permission is needed, there are exceptional cases where an operation can lawfully be carried out in the absence of positive action by the local planning authority or the Ministry to prevent it.

(3) In any other case, there will be little prospect of obtaining permission to develop by legal action.

(4) In the exceptional cases, where prior permission is not required, there may be considerable difficulty in establishing the rights of the landowner concerned before the operation is commenced. The procedure of s. 17 in particular, needs to be approached with caution.

(5) The procedure for enforcement under s. 23 of the 1947 Act, also, needs to be handled with caution, especially in a case where there is a dispute as to whether or not the alleged "development" was unlawful.

Valuation and Management

By W. A. LEACH, F.R.I.C.S.

I. Development Rights of Owners (*ante,* p. 38).
II. Effect of Planning on Property Management (*ante,* p. 92).
III. **Development Value—Development Charges—Effect on Property Values.**
IV. Compensation for Planning Action other than Development.
V. Valuation for Compulsory Acquisition.
VI. Valuation for Injurious Affection.

III. Development Value: Development Charges: Effect on Property Values

A. DEVELOPMENT VALUE

1. The abridgment of the development rights attaching to the ownership of land leaves the owner with the rights set out in the first of these articles (*ante*, p. 38), and, as there stated, Part VI of the Act gives a right to compensation for the loss of development value as defined below.

How much compensation any particular owner will receive remains to be seen in the light of the total claims made and the regulations to be made governing the disposal of the global compensation vote of £300,000,000. The amount is quite unpredictable, and as between vendor and purchaser the vendor should retain the right to compensation and the purchaser buy at " existing use " value. The term " existing use " is here used in the broad sense of existing scale of buildings and use for existing purpose, but with due regard to rights under Sched. III. (See Group B of Article I, *ante*, p. 41.) It is a matter of interest that the term existing use appears in this sense at the head of Sched. III, although by s. 119 " use " does not include the use of land for building and other operations.

2. The method of making and determining claims will be governed by the claims for Depreciation of Land Values Regulations, 1948 (SI 1948, No. 902), summarised on p. 142, *ante*. But a claim may be made in respect of any fee simple or leasehold interest including (s. 119) an under-leasehold and an agreement for a lease.

The claimant may submit his claims for land in which he has an interest in such parcels as he desires but the Central Land Board may direct the amalgamation of two or more such claims (s. 60 (4)). It would appear to follow that the Board cannot require the severance of a claim or the inclusion of additional land not the subject of a claim.

3. S. 61 provides that claims are to be based on the "development value" of the claimant's interest in the land, *i.e.*, the difference between the "restricted" and "unrestricted" values of that interest in the land in the state in which it exists and subject to incidents affecting the interest on July 1, 1948, but on the basis of values as at January 7, 1947. Note the special definition of "owner" in s. 64 (3).

Rules for Ascertainment of Development Value

4. The rules applicable to the ascertainment of both restricted and unrestricted values are as follows:

(1) Rules 2 (open market value), 3 (special adaptability) and 4 (illegal or unhealthy use) of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, are to be applied (s. 62 (1)). See para. 7, below.

(2) The existence of mortgages is to be ignored (s. 62 (3)). Information as to mortgages may be called for so far as affecting the destination of the compensation under s. 58 (4) (*a*).

(3) In the case of an interest in land expectant on the termination of a lease, the values are to be computed on the assumption that the lessee will at all times be able to pay the rent and perform his other obligations under the lease. Presumably the intention is that a possibility of forfeiture should be ignored and not that the lease rent should be regarded as gilt-edged. It is also to be assumed that any option for either party to determine or renew the lease will be exercised if it is in the interest of that party to do so; this rule applies to the valuation of both the freehold and the leasehold interests (s. 62 (2)).

5. The rules for ascertaining restricted value are as follows:

(1) The "restricted value" is the value of an interest, on the assumption that planning permission would be given for any development of the classes in Sched. III of the Act (see Group B of Article I, *ante*, p. 41), but not otherwise (s. 61 (2)). Any possible future development must be examined strictly against

Schedule III which offers many difficulties of interpretation. If the development may be restricted it should be excluded from the restricted value.

(2) The 1947 Act is to be disregarded except in its application to the actual land being valued (s. 61 (5), proviso). Thus it is to be assumed in an area of devastation that the surrounding property could be rebuilt or redeveloped as freely as before the passing of the Act and no effect can be given to the fact, if such it be, that the surrounding area has been planned as a lily-pond.

(3) Regard is to be had to any conditions attached to a town planning consent granted before the appointed day (s. 76 (4)).

(4) A building completed (*i.e.*, erection or alteration completed) under s. 77 is to be deemed to have been completed before July 1, 1948 (see (4) of Group D of Article I, *ante*, p. 44, and para. 6 (5), *infra*).

(5) Planning permission granted in cases falling within s. 79 is to be ignored (see (3) (b) of Group D in Article I, *ante*, p. 44).

(6) The power under the Act to require the discontinuance of the display of advertisements is to be ignored (s. 61 (3)). The restricted value will, therefore, be on the assumption that such display is possible, as will also be the unrestricted value. Thus the value of advertising will be eliminated from the development value although no compensation is payable for the restriction of advertising display under ss. 31 and 32.

6. The rules for ascertaining unrestricted value are as follows:

(1) The "unrestricted value" is the value of an interest on the assumption that the only provisions of the Act in force were those governing this valuation (s. 61 (2)).

(2) Where permission for development has been given and subsequently revoked or modified under s. 4 of the 1943 Planning Act the revocation or modification is to be ignored, except that (a) no account shall be taken of any works for which compensation has been paid under s. 7 (2) of that Act, and (b) the amount of any contribution under s. 4 (4), whether to the owner or his predecessor in title, is to be deducted from the unrestricted value (s. 61 (4)).

(3) Where the claimant has also an interest in land other

than that comprised in the claim, the unrestricted value of the interest which is the subject of the claim is to be reduced (as if the interest were the subject of compulsory acquisition by a Government department), by the amount which the claimant would be entitled to as compensation for severance or injurious affection. Thus if the development on which the unrestricted value is based would injure other land of the claimant, that other land is benefited by the restriction, and the claimant cannot have both the compensation for the restriction and the benefit of it to other land (s. 61 (6)).

(4) If the development on which the unrestricted value is based would, if carried out, involve the claimant in loss in the nature of disturbance of the purpose for which the land is being used on July 1, 1948, the amount of that loss is to be deducted (s. 61 (7)).

(5) A building completed under s. 77 is to be deemed to have been completed before July 1, 1948, and will, therefore, appear in both the restricted and unrestricted values. (See para. 5 (4) above.) No development charge in respect thereof will be payable under Part VII and no compensation due under Part VI.

(6) If the land is certified under s. 80 as "ripe", no account is to be taken of the development to which the certificate relates. The land is, in effect, to be considered incapable of that development. No development charge will be payable under Part VII and no compensation may be claimed under Part VI.

7. The incorporation of rules 2, 3 and 4 of the Acquisition of Land (Assessment of Compensation) Act, 1919, means that, apart from the special rules which have been noted, both values are to be ascertained as in the case of the valuation of interests for purposes of compulsory acquisition. Regard will, therefore, be had, so far as relevant, in both the restricted and the unrestricted valuations, to earlier town planning control over development and use, bye-laws, ribbon development control, easements and restrictions affecting the interest (so far as the same are incapable of modification under s. 84 of the Law of Property Act, 1925, or s. 163 of the Housing Act, 1936), degree of obsolescence, state of repair, and expenditure on alterations, etc., necessary to reap any potential value which may be taken into the valuation. It is to be remembered that under section 19 of the 1932 Planning Act

restrictions could be imposed on the size and use of buildings without liability to compensation (subject to sub-ss. (2) and (5)).

It is important to note that by s. 119 land includes buildings, so that, in considering the unrestricted value of any particular piece of land, regard must be had not only to the duration of any lease preventing the freeholder from rebuilding, enlarging the building, or changing the use, or any covenants of the lease preventing similar action by the leseee, but also to the period, which, on practical grounds, is likely to elapse before the existing buildings are discarded, or the existing use set aside. As pointed out in Article II, *ante*, p. 96, it may be preferable as a matter of policy to contemplate redevelopment whilst the existing buildings have an arguable value, than to wait until there is no argument against their worthlessness. It is not, therefore, essential that development should be regarded as deferred until the buildings are on the verge of collapse. If a landlord has recently granted a twenty-one years' lease of a building which is practically worn out, he has put beyond his power the possibility of early rebuilding and to that extent sacrificed his claim for development value.

If landlord and tenant can show a business probability that they will get together and carry out (subject to planning permission) a development on relaxation of existing building restrictions they may be able to substantiate a claim.

It will also be a matter for explanation, where it is claimed a building could be enlarged or a use changed, why this enlargement or change of use has not been carried out. If the answer to an enlargement is the present difficulty of obtaining licence, then why was the work not carried out in 1939 or earlier?

As pointed out in Article II, *ante*, p. 96, it may be preferable as a matter of policy to contemplate redevelopment whilst the existing buildings have an arguable value, than to wait until there is no argument against their worthlessness.

8. It is provided by s. 62 (4) that both the restricted and unrestricted values may be minus quantities, so that if the owner of an interest would give £100 to be relieved of the unrestricted value and £200 to be relieved of the restricted value, he will be entitled to claim £100.

9. When the development value does not average more than £20 per acre over the area of land comprised in the claim

or does not exceed 10 per cent. of the restricted value, the claim is to be excluded from the Scheme. Solely for the purpose of ascertaining whether or not the development value exceeds 10 per cent. of the restricted value it is to be assumed that the rent payable for a leasehold interest is a peppercorn, and any rent-charge non-existent (s. 63).

It is clear that the area of land to be included in a claim must sometimes be selected with care.

Assume an estate of 100 acres of which ten acres adjacent to a road have building value.

Whole area

Unrestricted Value

90 acres at £50 per acre = £4,500
10 acres at £100 per acre = 1,000

Total value £5,500

Restricted Value

100 acres at £50 per acre = £5,000
Development value £500 or £5 per acre — Does not exceed 10% of £5,000 or £20 per acre.

No claim.

Ten acres separately

Unrestricted value £1,000
Restricted value £500
Development value £500 or £50 per acre = more than 10% of £500 and more than £20 per acre.

Claim submissible.

The rule as regards rents is to overcome the difficulty that the restricted value of land subject to a rent may be very small so that a relatively unimportant loss of development value would overtop the 10 per cent. datum line.

Consider a lease of a house for forty-two years at a rent of £90 per annum, the house being suitable for conversion into a shop. The restricted value of the leasehold interest if regard is had to the rent may be nothing, or even a minus quantity, whilst the development value may be £1,000 less £900 cost of conversion = £100. The restricted value of the interest ignoring the rent, however, may be £1,000, in which case no claim would be submissible.

If small claims are to be excluded this is reasonable, for it is unlikely if the freeholder were in possession, that he would be able to qualify for compensation.

10. Where notice to treat has been served after August 6, 1947, whether before or after July 1, 1948, the restricted and unrestricted values are to be modified (s. 91). Land acquired by agreement by an authority with compulsory powers is correspondingly affected. Where notice to treat was received before August 6, 1947, the acquisition, if completed after July 1, 1948, is to be deemed to have been completed before that date.

11. There is a supplementary fund for war-damaged properties which is additional to the main £300,000,000 fund, its purpose being to provide additional compensation in those cases in which, in arriving at the after-damage value for purposes of estimating the value payment under the War Damage Act, 1943, it was considered that the site was suitable for a more profitable development than that formerly existing. If the more profitable development is now restricted, the value payment has been unfairly assessed.

These payments will be subject to a scheme yet to be prepared.

[*To be concluded.*]

Planning Association

(continued from p. 55, *ante*)

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Dealings with Land under the Planning Acts

By Harold Potter, LL.D., Barrister-at-Law

I. Inquiries Preliminary to Contract (*ante,* p. 48).
II. Contract for Sale (*ante,* p. 104).
III. **Requisitions on Title.**
IV. Conveyances on Sale.
V. Provisions in Settlements and Wills.
VI. Provisions in Leases and Mortgages.

III. Requisitions on Title

1. Where the contract has been drawn in the terms suggested in the previous article there should be little on which requisitions can be drawn. The matter, then, will primarily be one concerning the proper modes of deducing and investigating title. Where the contract is less explicit the problem of what requisitions can be insisted upon becomes acute. It will, therefore, be more satisfactory to deal separately with these cases. We take first the case where there is a detailed contract because what is said of deduction and investigation of title there will apply to open contracts.

(a) EXPRESS CONTRACT

(i) *Development Plan*

2. The Development Plan must clearly form the basis of any investigation of permitted use of the land. Theoretically, at least, inspection of the Plan is, therefore, necessary. Until the regulations made under s. 10 (2) of the Act for inspection and issue of copies have been made, it is difficult to say what course is necessary. The Act does not make copies evidence as such, but we can hardly expect that copies would not be adequate. The only vital point is that the copy must be such that no amendment can have been made and the effectiveness of copies will depend upon how they are issued under the regulations. Furthermore in the case of purchasers of single small properties, such as dwelling-houses, the Plan is not likely to be necessary or helpful.

The Plan is, presumably, a public document, but this does not prevent it forming part of the vendor's title in just the same way as restrictive covenants imposed by a building scheme. If this view is correct an extract relating to the land sold should form part of the abstract: cp. *Re Moody and Yates' Contract* (1885), 30 Ch. D. 344 (certificate of completion of a house). The expense of verifying the extract would fall upon the purchaser in accordance with s. 45 (4) of the Law of Property Act, 1925, but the duty and expense of abstracting seem clearly to fall upon the vendor: *Re Stamford, etc., Banking Co. and Knight's Contract*, [1900] 1 Ch. 287, because it rests with the vendor to show that the " actual use " is not inconsistent with the " permitted use ". Since the Plan may be amended at any time (s. 6), it is important to bear in mind that the Plan on an old abstract is of no real value with regard to the present position.

(ii) *Planning Permission*

3. If the land has been " developed " by permission of the local planning authority they will have granted a " planning permission " which may be subject to certain conditions and will specify the use to which any development may be put: s. 14. Furthermore, if the development is in respect of an industrial building exceeding 5,000 square feet floor space, a certificate of the Board of Trade will also be necessary unless it is otherwise prescribed by regulation: s. 14 (4). These " planning permissions " may be granted in pursuance of a Development Order which may apply to land generally, or to specific areas: s. 13. It is thought that a Development Order may be a statute and not a matter of title, but the planning permission seems to be clearly a matter of title and therefore, it should be abstracted. The local planning authority will keep a register as prescribed by the Development Order and this register will be open to the public. Whether an extract from the register could take the place of the planning permission itself must depend upon the character of the register (the rules governing which have not yet been issued) but planning permissions should be treated with even greater care, if possible, than official searches. If the permission is available there seems to be no valid reason for inspecting the register, since there is nothing in the Act to suggest that the register has greater validity than the permission itself.

4. The provisions of the Act are not retrospective. There are cases, however, in which a permission to develop has been

given before the Act and may be just as material. In our opinion this also must be abstracted, the expense of verification, if necessary, being borne by the purchaser.

In either event as the planning permission is material it should be handed over on completion or in appropriate circumstances included in the statutory acknowledgment for production.

(iii) *Registered Incumbrances*

5. If there are registered incumbrances, such as development charges under s. 74 or charges to secure development charges[1]: s. 71 (2), these will obviously require to be abstracted in the ordinary course. In fact, they will not be extraordinary to the usual practice of conveyancers and consequently, call for no comment here, except to remind vendors and purchasers that the vendor may be liable to discharge the charge unless he has made the contract subject to it: *Re Middleton and Young's Contract*, [1929] W. N. 10.

(iv) *Local Orders and Notices*

6. These orders and notices are those for abatement: s. 33; enforcement: s. 23; control of advertisements: s. 31; Building Preservation: s. 29; and Tree Preservation: s. 28. There is no particular uniformity about them, but, except for Building Preservation and Tree Preservation, they do contemplate enforcement involving expense. They, therefore, have a good deal in common with such liabilities as party wall notices under the London Building Acts: *Carlish* v. *Salt*, [1906] 1 Ch. 335; dangerous structure notices under the London Building Acts: *Tubbs* v. *Wynne*, [1897] 1 Q. B. 74; *Re Highett and Bird's Contract*, [1902] 2 Ch. 214; [1903] 1 Ch. 287; abatement of nuisance under the Public Health Acts: *Barsht* v. *Tagg*, [1900] 1 Ch. 231.

It is no objection to title that the burden may arise after the date for completion, nor is the vendor liable for any expense that may then fall upon the owner of the land in complying with it after the date fixed for completion: *Re Allen and Driscoll's Contract*, [1904] 2 Ch. 226. On the other hand, if the expense involved becomes charged upon or a liability due from the occupier or owner prior to completion, it will normally have to be borne by the vendor as an "outgoing": *Re Allen and Driscoll's Contract*, *supra*; *Camberwell Corporation* v. *Dixon*, [1910] 1 K. B. 424. But where the liability is a continuing one, then the purchaser is entitled to no compensation for the burden after completion if the charge was not determined prior to completion: *Re Farrer and Gilbert's Contract*, [1914] 1 Ch. 125, but it really depends upon the date at which the liability becomes a charge upon the property and not the date at which it becomes ascertained: *Stock* v. *Meakin*, [1900] 1 Ch. 683. Of course, this is subject to the terms of the contract [2] and "completion" may mean the day fixed for completion whether or not completion takes place. It seems to depend largely on whether or not the purchaser then becomes liable to discharge outgoings.

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[1] It may be convenient to point out that the term "development charge" is misleading to the conveyancer. It does not mean a "charge" on the land but a price paid for a licence to develop. If payable by instalments the present intention of the Central Land Board is that it shall not be a charge on the land: see *ante*, p. 123.

7. In the case of an enforcement notice, however, the effect of s. 24 (2) may be to impose the obligation for expenses upon the vendor. This can only be so if the vendor is the person who carried out the unauthorised "development". If this sub-section applies then the purchaser can recover for expenses incurred after, as well as before, completion.

8. The position, therefore, seems that, except in so far as the contract is made expressly subject to any of these orders or notices, the expense of complying with them will fall on the vendor prior to completion. Apart from this, where they are restrictive of user, as, for example, Tree Preservation Orders, they will form part of the title to be abstracted and proved, presumably, by the production of the order or notice. No provision seems to be made for keeping a register of such orders, but no doubt this will be done, probably in accordance with a regulation not yet issued.

(v) *Existing Use*

9. From the point of view of the purchaser the most difficult and, perhaps, the most important question of title is the existing use, or permitted use.[3] To a very large extent this is a matter of fact and is independent of any documentary evidence. Of course, if there is a planning permission under the law before the Appointed Day, this may settle the question and in any event it should be abstracted. But this will be the exceptional case. Although the permitted use will include "normal user", "regular user" and the "last user" in the

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[2] See also under General Requisition.

[3] We refer to the difficulty of an adequate terminology of the lawful use of the property mentioned in the footnote *ante*, p. 116.

case of land unoccupied on July 1, 1948, nevertheless there appears to be no real way of establishing the permitted use, since even the Appointed Day will not provide a visible hallmark for the premises. In a few exceptional cases there will be an agreement with the planning authority that determines both the use and the conditions subject to which it can be enjoyed, but in most cases it will be a question of fact subject to the provisions of the Act.

10. The difficulty which faces the purchaser has a twofold aspect. First, in the event of a subsequent sale, he requires evidence of the " existing use " of which he cannot speak from his own knowledge. Secondly, in the event of challenge by the local planning authority he must be able to satisfy the Court that there is no unauthorised development. Neither a recital in the conveyance : *Bristow* v. *Cormican* (1878), 3 App. Cas. 641, at pp. 653, 662 ; nor a statutory declaration can be used as evidence in the latter case. In our view, however, it is not possible for a purchaser to insist upon evidence not usual in conveyancing. The position is not markedly different from other facts on a title which cannot be proved by ordinary documentary evidence. The vital difference is that vendors may be quite honestly mistaken more easily than in, say, the long user of an apparent easement or occupation by adverse possession.

The relevant requisition would be on the evidence that the vendor has. Clearly the correct person to make any statutory declaration is the person who has, in fact, enjoyed the use of the premises. The vendor is bound to answer a requisition which affects the title, as in our submission this requisition does, but the requisition must not be too generally framed : see *Re Ford and Hill* (1879), 10 Ch. D. 365. Once a satisfactory statutory declaration is obtained this will no doubt be used on all subsequent sales as the relevant evidence. It must also be remembered that it is necessary to enquire whether there was, prior to the Appointed Day, a planning scheme and whether or not the suggested user was in contravention of it.

11. It should be borne in mind that this question will equally arise where the property is specifically described in the particulars notwithstanding that the recommended clause is not used. For example, if property is described as " building land " it must be suitable for this purpose : *Dykes* v. *Blake* (1838), 4 Bing. N. C. 463. It will now become a question whether physical suitability will be sufficient, or

whether it must be shown that such a " use " is permissible within the planning scheme. Indeed, it will then raise a further question, whether or not it implies that no development charge will be levied in the event of property being built upon it. In fact, of course, this description should never be used in particulars, because of the obvious problems which arise, unless the full facts are set out. Other examples are more likely; for instance, the description of the property as a " dwelling-house " must imply that it can be so used and, it is submitted, that this was the " existing use ". The various possibilities in the use of such expressions as " business premises " are self-evident.

(vi) *Development Value*

12. As we have pointed out (Article I, *ante*, p. 53) the right or claim to " compensation " for development value: s. 64 (1), does not seem to be included in a sale without express mention. We do not think that Clause 20 (3) of the Law Society's General Conditions of Sale can incorporate this claim into the contract. If it is included in the contract a requisition should be made whether a claim has been lodged and for particulars of the same.

(vii) *General Requisition*

13. In every case a general requisition should be made concerning planning modification, notices, orders, etc. Attention may here also be drawn to clause 20 (3) of the General Conditions of Sale. No doubt this clause will be revised to fit the circumstances of the new Act, but as it stands it appears to impose on the purchaser all the liability for and confer on him all the benefit of all matters arising after contract. It seems, however, to be subject to the express provisions of s. 24 (2) imposing liability on the " developer " for meeting the costs of any " unauthorised development ". Whether the Court will hold that a vendor could contract out of that liability remains to be seen, but it is suggested that it is a positive obligation and in any event we do not think that a general clause could affect it.

(b) OPEN CONTRACT

(i) *Existing Use*

14. If the contract is " open " the difficulty under present conditions is to determine what the vendor's abstract must

show. As we have pointed out (*ante*, pp. 108–111), there was not, prior to the Appointed Day, any warranty that the property was suitable for any particular purpose unless either (i) it was so described, *e.g.*, as valuable business premises : *Charles Hunt* v. *Palmer*, [1931] 2 Ch. 287 ; or (ii) the vendor knew that it was required for some purpose and also knew of a defect rendering it unsuitable : *Shepherd* v. *Croft*, [1911] 1 Ch. 521. It will no doubt be argued that the law on this point has not been changed and that, therefore, in the absence of any specific description the abstract of title is not concerned with the " existing use ".

It is believed that this view will receive at first general acceptance, but it is also believed that it is erroneous. A matter of title is distinguished from the " quality " of the property. So far, this point has been taken in actions resisting specific performance and it has not often been necessary to regard the matter from this point of view. Williams, *Vendor and Purchaser*, states the nature of a matter of title as follows : " The vendor's title is a matter which is exclusively within his own knowledge " (at p. 763); or again: " A man's title to land must necessarily lie within his own knowledge alone and is not generally to be ascertained by independent investigation " (at p. 810). Most of the cases on which these statements are based are concerned with non-disclosure of restrictive covenants, such as *Nottingham Patent Brick and Tile Co.* v. *Butler* (1886), 16 Q. B. D. 778, or onerous covenants in a lease : *Re Haedicke and Lipski's Contract*, [1901] 2 Ch. 666. Furthermore the distinction is not made with respect to what must be abstracted, but what must be disclosed on the contract. Nevertheless, to carry the rule *caveat emptor* to the extent that a purchaser buying property under an open contract buys it for the " permitted use ", irrespective of whether or not the property is being used in contravention of the Act, seems to carry the doctrine too far.

It is submitted that when the doctrine of *caveat emptor* was laid down with regard to suitability this was based upon the fact that the state of the premises could be viewed and ascertained, since it has always been the purchaser's duty to inspect the physical condition of the property: *Oldfield* (*or Bowles*) v. *Round* (1800), 5 Ves. 508; *Keates* v. *Cadogan* (1851), 10 C. B. 591. In those days the point really was that the land was not warranted to be suitable for all purposes or for any particular purpose, unless the contract expressly or impliedly represented that it was. The effect of the Act has been completely to reverse the picture. The property is *prima facie* only capable of a limited use and this use will normally be the use of the property at the time when it ought to have been inspected. It, therefore, seems that whether or not the actual use is the "permitted use" is a matter of title. It is submitted that this view follows from the reasoning of the Court of Appeal in *Re Forsey and Hollebone's Contract*, [1927] 2 Ch. 379, where it was held that a town planning resolution did *not* constitute an objection to title although a confirmed scheme might do so. The essence of the judgment seems to lie in the fact that the resolution was only designed to prevent speculative buying with a view to compensation. Whereas the Scheme itself might definitely affect the title and, therefore, would constitute an objection, and the question seems to have been treated essentially as one of title.

This may be emphasised by another aspect of the matter. What constitutes the permitted use is really an act in the law, since the Appointed Day operates to determine the question as a matter of law on the facts existing then: see s. 12. As an act in the law it is just as much a matter of title as, say, the death of an annuitant which releases the land from an incumbrance or, indeed, the title of an adverse possessor. In our view, then, every Abstract of Title should contain an entry against the date of the Appointed Day that "The land was at this date subject to the existing use of . . ." or as the case may be.

15. Assuming this to be correct and assuming that there is no development permission given by the existing planning authority there remains the duty of satisfying the purchaser that the abstracted use is valid and subsisting. The position seems to fall within the principle enunciated in Williams, *Vendor and Purchaser*, 4th ed., at p. 170, as follows: "With regard to the evidence necessary to prove the facts as distinct from the documents stated in an abstract, what a purchaser requires is testimony reduced to writing so that it may be preserved as a muniment of title. So far as the facts may be proved by written evidence admissible in a Court of justice a purchaser is entitled to call for such evidence, if it can be obtained. But if none such can be procured he must accept other evidence such as it is the established practice to receive on sales". The burden of this obligation is lightened by the requirement that the expense of searching for, procuring, making, verifying and producing all evidence and information not in the possession of the vendor or his mortgagee or

trustee falls upon the purchaser (Law of Property Act, 1925, s. 45 (4)), and this applies to a statutory declaration of the fact: see *Re Wright and Thompson's Contract*, [1920] 1 Ch. 191.

Having regard to the obvious difficulties of the situation we may express a hope that the Planning Authorities may devise some form of co-operation, such as a certificate of "authorised existing use", which would provide the evidence appropriate in a court of law. Meanwhile the purchaser must satisfy himself with regard to the existing use in the best way he can. Two things may be possible: (i) an extract from the Development Plan, where such exists, and provided the property is identifiable; (ii) a statutory declaration made by the vendor, jointly with the occupier, if the vendor is or was not in possession, of the facts of user on the Appointed Day. This will not relieve the purchaser from ascertaining in appropriate cases whether or not the land was subject to a planning scheme prior to the Appointed Day so that there may be no question of retrospective contravention.

16. The Statutory Declaration must make clear the facts not only on the Appointed Day but also cover the period of "sterilisation" imposed by the Interim Development Act, 1943, beginning October 22, 1943. In fact the restricted use of the land may be said to begin on that day. Nor must it be forgotten that where the land was unoccupied on the Appointed Day the "existing use" will be antedated: s. 12 (5) (*c*); and that a use may be "temporary": s. 12 (5) (*a*).

A more difficult case is that contemplated by s. 12 (5) (*b*). Here the land may have several "uses" at different times in the year. This obviously applies to "seasonal" uses and, probably, will not cause so much difficulty in practice as in theory. Theoretically it is hard to see how inspection of the land incorporates all forms of use, and this indicates that the general situation is in urgent need of greater definition. Nevertheless, it is essentially in these cases that the purchaser requires evidence, so far as he can get it, of the authorised forms of "use".

(ii) *Registered Incumbrances*

17. These registered incumbrances (*ante*, p. 105) do not require much consideration. Probably the vendor will have to discharge them if not disclosed, and they can be discharged by the payment of money, as, for example, a development charge. If the contract is subject to the General Conditions

of Sale this would certainly seem to be the case : *Re Middleton and Young's Contract*, [1929] W. N. 70; and see clause 20 (1) (*a*). If they are not disclosed they would probably be a good defence to an action for specific performance unless under *Re Forsey and Hollibone's Contract*, [1927] 2 Ch. 379 it was held that the purchaser was affected by notice by virtue of registration. Even then the contract would not be enforceable if the restrictions would impose undue hardship.

(iii) *Local Orders and Notices*

18. We have already dealt with these matters also (*ante*, p. 190). In so far as they are capable of being removed, *e.g.*, compliance with an abatement notice : s. 33, the vendor will have to bear the expense of compliance : see *Re Leyland and Taylor's Contract*, [1900] 2 Ch. 625; *Beyfus* v. *Lodge*, [1925] Ch. 350. In so far, however, as they operate as permanent restrictions on the use of the land, as in the case of a Tree Preservation Order or a Building Preservation Order, it would seem that the vendor cannot make a good title. We suggest that this is doubly the case because not only does the Order operate as a restriction on the use of the premises, but failure to comply may involve the purchaser in proceedings before the magistrates. In the case of business premises there is also the problem arising from control of advertisements : s. 31, but until the issue of the regulations it is not possible to be more precise. It is apparent, however, that a requisition should be inserted on these topics and even when an omnibus enquiry is made it seems at least desirable to make such a requisition specifically : see *Re Ford and Hill* (1879), 10 Ch. D. 365.

It is thought that, if requisition produces evidence of undisclosed orders or notices under this head, it will depend upon the circumstances how far, if at all, the purchaser would be entitled to claim rescission of the contract. It will turn upon the obviously vexed question whether or not the purchaser has got substantially what he bargained for. On the other hand where liability to expense has arisen prior to completion it seems to fall upon the vendor as explained above (*ante*, p. 190).

(iv) *Development Permission*

19. Where a development permission has been granted before the Act or subsequently to the Act subject to a condition or conditions : s. 14 (1) (2), the permission appears to be

a document affecting title. This is unfortunate, because the old agreements for permission were not usually so treated, primarily because they were regarded as temporary; but unless the conditions are complied with, the use is or becomes unauthorised: s. 76. For the future the position will be different, because the Act contemplates a register of such permissions open to the public: s. 15 (5). How far such a register will be a matter of search and not of abstract remains to be seen.

For the present, however, the permissions subject to condition will have been made under the old law. They will involve two questions: (i) the expense of compliance; and (ii) the restriction on use. In our view the latter question will solve itself, because either the property will be substantially different after compliance or the position is unlikely to be affected. The expense of compliance may be a very different matter. It is submitted that this falls into the same category as other forms of compliance with local authorities' requirement, such as street paving, lighting or sewering: *Stock* v. *Meakin*, [1900] 1 Ch. 683; *Camberwell Corpn.* v. *Dixon*, [1910] 1 K. B. 424, and the liability falls upon the vendor because the obligation arises on the agreement, unless no development has taken place, in which case the burden may be on the purchaser: cp. *Stock* v. *Meakin*, [1900] 1 Ch. 683; *Re Allen and Driscoll's Contract*, [1904] 2 Ch. 226.

(v) *Development Plan and its Modification*

20. It is unlikely that in an open contract there will be any reference to the Development Plan. For reasons we have already given we think that it must form part of the title. This, however, does not dispose of two further difficulties. First, the Plan may be modified between the date of contract and completion: see s. 6. Secondly, the land may become subject to compulsory purchase by designation: see ss. 37, 38. Land can also be acquired by the Central Land Board under an order of the Minister: s. 43. In the event of liability to compulsory acquisition and no provision appearing in the contract [4] it would seem that a purchaser may be entitled to rescind the contract on the same sort of grounds as have entitled a purchaser to rescind as if for a requisition: *James Macara* v.

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[4] Clause 9 (*ante*, p. 119) inadvertently omitted any reference to compulsory acquisition and after "land" in line 6 of the clause should be added the words "or rendering the land subject to compulsory acquisition by designation or otherwise".

Barclay, [1945] K. B. 148. Nevertheless, the cases are not on all fours by any means. If the contract was open and included vacant possession as a consequence: *Cook* v. *Taylor*, [1942] Ch. 349, compulsory acquisition prior to completion would, of course, defeat the contract. In *Cramp* v. *Hughes*, [1944] W. N. 181, affirmed on this point by *James Macara* v. *Barclay*, *supra*, a notice of requisition has been treated as the date at which requisition became effective. If this principle were also applied to designation for compulsory purchase, then at least where the contract is for vacant possession such designation would entitle the purchaser to rescind. Since years may elapse between designation and acquisition we are by no means sure that the Court would take this view. But it could also be argued that the whole position with regard to the use of the premises has been altered by such designation and that, therefore, the purchaser is not getting substantially what he contracted to buy.

This last point brings us once more up against the vital issue whether or not the nature of the interest in land has been radically altered. If "fee simple" now equals an "existing use in fee simple" in our opinion there is much substance in the argument which would also relate to any substantial charges in the development plan.

(vi) *Development Value*

As a claim on the "global fund" in respect of loss of development value vests in the owner on the Appointed Day as "personal property": see s. 64; it does not seem that this right can be included under an open contract. Whether or not a purchaser could after completion be compelled in any way to assist the vendor in making his claim, if any, seems uncertain.

(vii) *General Requisition*

It seems desirable at present to have a general requisition applying to any effect of the Act. The difficulty arising in the case of such a requisition is that a burden is not bound to answer a requisition in the nature of an interrogatory that may not be relevant to the abstracted title: *Re Ford & Hill* (1879), 10 Ch. D. 365. It is submitted, however, that such a general requisition, in the present circumstances at least, is relevant to the title and should be answered: See Williams, *Vendor and Purchaser*, 4th ed., p. 173.

Forms of Requisitions on Title

[Note.—If the Preliminary Inquiries (*ante*, p. 58) have been used, a number of these Requisitions will be irrelevant.]

I. EXPRESS CONTRACT

1. Is the land subject to a Development Plan under the Town and Country Planning Act, 1947? If so, a copy or extract of the Plan relating to the property sold must be supplied please.
2. On the Development Plan affecting the property to be sold [part of] the land is shown as [designated for compulsory purchase, *or as the case may be*]. This was not disclosed prior to contract and the purchaser claims an abatement in the price.
3. The purchaser reserves the right to rescind the contract or claim an abatement in the purchase price of the land contracted to be sold in respect of any designation for compulsory purchase or restrictions imposed by [any amendment or modification of] the Development Plan under the Town and Country Planning Act, 1947, made prior to completion.
4. Is the user of the property contracted to be sold affected by any planning or interim development permission granted in pursuance of the Town and Country Planning Act, 1947, or by any statute replaced thereby? If so, such permission must be abstracted and handed over on completion.
5. The planning [*or* interim development] permission dated day of does not include the use of the premises as [ ]. The vendor must satisfy the purchaser that such user is authorised and does not constitute an unauthorised "development" for the purposes of the Town and Country Planning Act, 1947.
6. Search discloses that the land contracted to be sold is subject to a development charge dated registered under the Land Charges Act, 1925. This charge was not disclosed in the contract and the vendor must discharge the same prior to completion.

7. Search discloses that the land contracted to be sold is subject to restriction on development [by an agreement dated the day] *or* [as an historic building] registered under the Land Charges Act, 1925. These restrictions were not disclosed in the contract and the purchaser claims [an abatement in the purchase price] *or* [to rescind the contract].
8. The [order] *or* [notice] for [Tree Preservation] *or* [Building Preservation] *or as the case may be* affecting the land contracted to be sold was not disclosed in the contract. The purchaser therefore claims [compensation in respect of this defect in title] *or* [rescission of the contract].
9. It appears that the land contracted to be sold is subject to a [notice given under s. 33 of the Town and Country Planning Act, 1947], *or* [an enforcement notice under the Town and Country Planning Act, 1947]. The vendor must comply with this notice prior to completion and bear the expense thereof.
10. The Tree Preservation Order made under the Town and Country Planning Act, 1947, *or as the case may be* must be abstracted and handed over on completion.
11. The abstract of title discloses no evidence that the use for which the land was contracted to be sold is an authorised use for the purposes of the Town and Country Planning Act, 1947. The vendor must satisfy the purchaser that such use is so authorised.

II. OPEN CONTRACT

1. (i) The Abstract of Title does not disclose the "existing use" for which the premises contracted to be sold could be used on the Appointed Day. This must be abstracted.
   (ii) Is this "existing use" still the permitted use under the Town and Country Planning Act, 1947? If not, the purchaser must be satisfied that such change is authorised under the said Act.
   (iii) What evidence has the vendor to show what is the permitted use?
2. Was the land contracted to be sold subject immediately prior to the Appointed Day under the Town and Country Planning Act, 1947, to a planning scheme? If so, please supply particulars of such scheme so far as they relate to the property.

3. Are any incumbrances under the Town and Country Planning Act, 1947 registered as land charges in respect of the property? If so, such incumbrances must be discharged at the vendor's expense prior to completion.
4. The restrictions imposed under the Town and Country Planning Act registered as a land charge in respect of the property contracted were not disclosed on the contract. Full particulars must be abstracted and the purchaser reserves his right to rescind the contract in respect of non-disclosure.
5. (i) Is the land subject to any abatement notice or enforcement notice under the Town and Country Planning Act, 1947? If so, please supply particulars.
   (ii) Is the land subject to any Tree Preservation Order or Building Preservation Order made under the Town and Country Planning Act, 1947? If so, please supply particulars.
6. Are the premises affected by any notice or order relating to the control of advertisements? If so, please supply particulars.
7. (i) Has any planning or interim development permission been granted under any Town Planning Act? If so, please supply particulars.
   (ii) If any conditions were imposed by such permission the vendor must satisfy the purchaser that they have been carried out at the vendor's expense prior to completion.
   (iii) Such permission, if any, must be handed over on completion.

[*Add, where appropriate, Requisitions* 1, 2, 3, 6, 7 *from head I above.*]

III. GENERAL REQUISITION

Is there any restriction, order, notice, act, matter or thing affecting the use of the land or any part thereof or building thereon by reason of the Town and Country Planning Act, 1947, not appearing on the Abstract of Title or in replies to these requisitions?

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Mr. Silkin's Message—

MESSAGE FROM MR. LEWIS SILKIN, MINISTER OF TOWN AND COUNTRY PLANNING TO THE JULY ISSUE OF "THE JOURNAL OF PLANNING LAW"

I WAS glad when the Editor of *The Journal of Planning Law* asked me to contribute to the issue of July 1, 1948, for this is a date which will ever be a landmark in the history of planning in our country. Today the 1947 Town and Country Planning Act comes into force—an Act which I believe will enable us at last to plan the development of our country imaginatively and courageously. The new Act paves the way for the ideal development plan, which should be commendable both because it is a good plan, and because it is practicable and not unreasonably expensive. Local authorities, relieved of much of the burden of compensation, will now be able to prepare such plans. Although the county councils and county boroughs are the planning authorities, I am anxious that the county district councils should play their full part in this process, and that the public should take as much interest as their elected representatives in the evolution of these plans.

I believe that the Act will give us greater powers to develop our urban areas into the cities and towns we have long wanted to see. Valuable work has been done already under the Town and Country Planning Act, 1944. The new Act extends the principles then laid down, and opens up new possibilities. Local authorities on whom much of the cost will fall, will receive grants on a wider and more generous scale than ever before, and I hope they will be quick to seize their opportunities.

Here I would emphasise that there will remain ample scope for the private developer. While local authorities may themselves carry out more development than they have done in the past, the need is great enough for public and private enterprise to work side by side, and I would emphasise that the last thing I want to do is to discourage individuals. The development charge must not be looked upon as a tax; it is merely one part of the machinery by which the Act restricts land to its existing use. Without that restriction the best development plan in the country could never be made fully effective. If everybody will realise this, and set his face firmly against the temptation to pay more for land than it is worth for its existing use, there need be no fear that the Act will increase costs. The Central Land Board is under an obligation, in levying development charges, to pursue a policy which will make land freely saleable in the market at the value for its existing use, and I am confident that it will do its utmost to help developers in their vital task of turning plans into realities.

Lewis Silkin

June 11, 1948.

Control of Land Use

By DESMOND HEAP, LL.M., L.M.T.P.I.,
Comptroller and Solicitor to the Corporation of the City of London

I. Planning Law and the Meaning of "Development" (*ante,* p. 7).
II. Planning Law and Development Permission (*ante,* p. 63).
III. Planning Restrictions and the Recovery of Compensation (*ante,* p. 124).
IV. **Further Observations on the Meaning of "Development" and the Need for and Methods of Obtaining Planning Permission therefor.**
V. Planning and the Designation, Development and Disposal of Land by Local Authorities.
VI. Planning Control and its Enforcement.
VII. Planning and the Preservation of Trees, Special Buildings and Amenities.

IV. Further Observations on the Meaning of "Development" and the Need for and Method of Obtaining Planning Permission therefor

1. The stream of Orders and Regulations made by the Minister under powers conferred upon him by the Town and Country Planning Act, 1947 (hereinafter called "the Act"), is now beginning to flow in increasing spate, and the recent issue of one set of Regulations and of two Orders makes it advisable in this number of *The Journal* to interpolate this present article into the series of articles (originally planned as six) under the general heading of "Control of Land Use". This present article should, accordingly, be read as an addendum to Articles I and II of this series at pp. 7 and 63 respectively, *ante*.

2. The particular Regulations and Orders which give rise to this article are the Town and Country Planning (Making of Applications) Regulations, 1948 (SI 1948, No. 711), printed in full on p. 82, *ante;* the Town and Country Planning (Use Classes) Order, 1948 (SI 1948, No. 954), summarised at p. 145, *ante;* and the Town and Country Planning (General Development) Order, 1948 (SI 1948, No. 958), printed in full at p. 149, *ante*. These particular Regulations and Orders

affect in decisive fashion, firstly, the meaning of "development" as that expression is used in the Act; secondly, the question whether or not formal application for planning permission need be made before development is undertaken; thirdly, the method of making any such formal application; and fourthly, the manner in which such formal applications are to be dealt with on being received by a local planning authority.

3. There is a good deal of overlapping in the effect of these three important statutory instruments, each of which must be read in the light of the others. The object of this article is accordingly to give an overall summary of the effect, and a general drawing together of the provisions, of all three.

Meaning of Development—The Use Classes Order, 1948

4. Development for the purposes of the Act is defined in sub-s. (2) of s. 12, to which sub-section there are six provisos which except from the definition of development the matters respectively referred to therein. By virtue of proviso (*f*) it is enacted that in the case of buildings or land used for a purpose which falls within any class specified in an Order made under the section by the Minister, the use of such buildings or land for any *other purpose* falling within the *same class* shall not constitute development and accordingly the need to obtain planning permission therefor, and also the liability for development charge in respect thereof, will not arise.

5. The Minister has now made the aforementioned Town and Country Planning (Use Classes) Order, 1948, specifying the classes of use contemplated by proviso (*f*) of s. 12 (2) of the Act.

This Order contains no less than 22 different classes of use and many of the expressions employed in describing them are given extended meaning by the definitions in art. 2 (2) of the Order, certain of which definitions merit special mention here:

(1) There is, for example, what may be termed a basic definition of the expression "industrial building" and this is followed by even more refined definitions of "light industrial building", "general industrial building" and "special industrial building".

(2) The word "office" is defined so as to include a bank.

(3) The word "shop" includes, generally speaking, all retail shops *excluding* those which sell refreshments but

including those which sell " light refreshments ", *i.e.*, beverages and also eatables provided the latter are *not* cooked on the shop premises. Thus that popular institution known as a " tea-shop " will not be a shop under this Order if the eatables which it provides are " cooked " on the premises. (It is thought that Mrs. Beeton would never have regarded cooking as including mere reheating, but it is a nice point !)

(4) The following also constitute shops under the Order: A hairdresser's establishment; an undertaker's establishment; an agency supplying railway, theatre and other tickets; a laundry or dry-cleaning receiving office.

(5) The following do not constitute shops for the purposes of the Order: An amusement arcade, a pin-table saloon, a fun fair, a garage, a petrol-filling station, an hotel or any other premises licensed for the sale of intoxicating liquors for consumption *on* the premises.

6. With the foregoing definitions in mind attention may now be paid to art. 3 and to the Schedule to the Order, the short effect of which is that (subject to any exceptions specified in the classes themselves) the use of a building for any purpose specified in one of the 22 classes may be changed to any other purpose falling within the same class without the need to obtain any planning permission whatsoever; for any change of use which still leaves the use within its original class does not constitute development under the Act (s. 12 (2) (*f*)). In other words, provided a use already falls within one of the 22 classes, it may " leap about ", as it were, and change itself to its heart's content and without thought of planning permissions provided it keeps itself within the scope and confines of the particular class into which it originally falls. What it may not do is to leap about *from one class to another* unless, of course, it can be argued that notwithstanding such a leap the change does not constitute a *material* change of use as enunciated in s. 12 (2) of the Act. Indeed, when considering this Order there must be kept in mind the overriding principle, established by the Act itself, that change of use constitutes development only if the change is a material change. Provided the change keeps itself within the confines of a class specified in the Order the matter of whether the change constitutes a *material* change is put beyond argument: it does not. But if the change is from one class to another class the matter is left open and the Order

certainly does not preclude argument as to whether, in the particular circumstances, the change is substantial enough to constitute a material, as distinct from a trifling, change.

7. The twenty-two classes themselves have already been referred to at p. 145, *ante*, and no useful purpose will be served in summarising the whole of them again. Further reference may, however, be made to certain of them.

CLASS I. It follows from the provisions of Class I that provided a building is used on July 1, 1948, as a shop it may change its use to a totally different kind of shop without any need of planning permission, provided always that it does not transform itself into a fried fish shop, a tripe shop, a shop for the sale of pet animals or birds, or a cats-meat shop.

Thus a grocer's shop can, without planning permission, become a butcher's shop, or a greengrocer's shop, or a hairdressing establishment, or a ticket agency, or a shop selling beverages and also eatables provided they are not cooked on the premises. Whilst it is clear that a grocer's shop cannot, without permission, transform itself into a fried fish shop, it may be asked whether, conversely, a fried fish shop can transform itself into a grocer's shop without planning permission. Such a change would, it is submitted, constitute a material change of user, and whilst it is not authorised by the Town and Country Planning (Use Classes) Order, 1948, it *is* authorised as " permitted development " under the Town and Country Planning (General Development) Order, 1948, art. 3 (1), and the First Schedule, Class III (*b*) (as to which, see p. 215, *post*).

CLASS II of the Use Classes Order now makes it clear that an auctioneer's office may transform itself into a solicitor's office or into a bank without the need for planning permission.

CLASS III. Under Class III of the Order a light industrial building used for a particular purpose may transform itself into a light industrial building used for another type of purpose provided always that it remains throughout a light industrial building as defined in art. 2 (2) of the Order.

CLASS IV. Under this class, a general industrial building may similarly transform itself provided that it remains throughout a general industrial building as defined in art. 2 (2) of the Order. As has already been mentioned, if a use leaps from one class into another class, it puts itself beyond the protection of the Order. Accordingly, a general industrial building may not, so far as this Order is concerned, so change the purposes for which it is used as to transform itself into a light industrial building, but it is to be noted that such a change *is* authorised by the Town and Country Planning (General Development) Order, 1948, art. 3 (1), and the First Schedule, Class III (*a*) (as to which, see p. 215, *post*).

8. Referring briefly to some of the other twenty-two classes, it appears that under Class XVII a hospital can become an institution for mental defectives; under Class XV a convalescent home can become a hospital, and under Class XVI a health centre can become a day nursery. So far as this Order is concerned a convalescent home (being in Class XV) could not transform itself into a day nursery (which is in Class XVI) for the Order does not authorise, as has been mentioned, a use to leap from one class to another. But such a change, it is to be stressed, *can* take place independently of the provisions of this Order and without planning permission if it can be shown that the change of use (from a convalescent home to a day nursery) does not constitute a material change of use. Similarly, under Class XIX a theatre can become a cinema, and under Class XXII an exhibition hall can become a concert hall. The Order, however, does not itself authorise the theatre to leap out of Class XIX into Class XXII and become a concert hall, but, notwithstanding this, it is debatable whether a theatre which changes into a concert hall does in fact undergo any material change of use, and if it does not then, under the general principles of the Act, as enunciated in s. 12 (2), there will be no development and the need to obtain planning permission in respect thereof will not arise.

9. The foregoing instances of change of use have been chosen (somewhat at random) to emphasise two points, which are, firstly, that this Order does not impose controls itself but relaxes controls which otherwise exist, and, secondly, that if it can be shown that a change of use does not constitute a *material* change of use then, notwithstanding the fact that the change may be such as to shift a particular building out of one of the specified use classes into another one, such change of use will not constitute development.

10. In considering the effect of this Order it should be remembered that it is open to a local planning authority after

July 1, 1948, when granting planning permission for development of a kind which will bring a building into one of the specified use classes, to grant the permission subject to such restrictive conditions as would prevent the use of the building from being changed (without further permission) to any other kind of use, even although such other kind of use is within the same class as that for which planning permission has been granted. Against such restrictive conditions there would, of course, be a right of appeal to the Minister under s. 16 of the Act.

11. Before leaving the present Order, the object of which is to exempt from the definition of development certain changes of use which would otherwise be caught within the definition, it remains to be mentioned that the Order is liable to alteration at any time by means of a further Order made by the Minister (s. 111 (4)). In this respect, the Town and Country Planning (Use Classes) Order, 1948, is different from, and accordingly must not be confused with, the Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948 (SI 1948, No. 955). The object of the latter Order is to exempt the types of development therein mentioned from liability for development charge, and so that land owners may know for certain whether in the future such development will or will not be exempt from development charge, this latter Order is not capable of alteration after July 1, 1948 (s. 111 (4) proviso). At the present time, those changes of use which are exempted from the definition of development by virtue of the Use Classes Order, 1948, are precisely the same changes of use which are exempted from development charge by the Use Classes for Third Schedule Purposes Order, 1948, but, whereas the former Order is liable to alteration at the Minister's discretion, the latter Order, after July 1, 1948, cannot be changed at all.

12. Having considered those changes of use exempted from the definition of development by the Town and Country Planning (Use Classes) Order, 1948, it is necessary to consider certain kinds of development which, whilst not exempted from the definition of development as given in the Act, still do not require to be made the subject of an application for planning permission. This leads to a consideration of those portions of the Town and Country Planning (General Development) Order, 1948 (the text of which is set out *ante*, p. 149) relating to what is termed "permitted development".

"Permitted Development" under the General Development Order, 1948

13. It will be remembered that under s. 12 (1) of the Act planning permission is required in respect of any development carried out after July 1, 1948, and by s. 13 (1) of the Act such permission may be granted either by the provisions of a development order or by a local planning authority. The development order envisaged by s. 13 (1) of the Act has now been made and it is the aforementioned Town and Country Planning (General Development) Order, 1948. Attention must again be directed to the use in this Order of expressions which are given special and extended meaning by virtue of the interpretation provisions of art. 2 of the Order.

By virtue of art. 3 of this Order planning permission is automatically given for all the twenty-one different classes of development set out in the First Schedule to the Order, which classes are, accordingly, referred to in the Order under the general heading of "permitted development". If development can be brought within the confines of any one or other of these twenty-one different classes, then no application for planning permission in respect thereof need be made to any local planning authority, the General Development Order itself constituting sufficient planning authorisation therefor.

14. Again, no useful purpose would be served in setting out here full details of all the twenty-one classes of permitted development. Such details can be found at p. 160, *ante*. Certain comments, however, may perhaps usefully be offered upon a number of these classes.

CLASS I

Development within the curtilage of a dwelling-house. This class relates to development occurring within the curtilage of a dwelling-house, and whilst a number of buildings or works or shelters normally required in connection with the use of a dwelling-house as such will be authorised under this class, *e.g.*, summer-houses, greenhouses, tool sheds, beehives, dog kennels, dovecotes, poultry houses (provided that any such buildings or shelters do not exceed 10 feet in height *and* the cubic capacity thereof does not exceed 1,000 cubic feet), the erection of a garage is not authorised and, accordingly, express planning permission from the appropriate local planning authority for a garage must still be obtained.

CLASS II

Gates and fences, etc. Gates, fences, walls and other means of enclosure are authorised by the Order provided they do not exceed 7 feet in height and provided they do not afford access to, or are abutting upon, a highway.

CLASS III

Changes of use. Under this class is authorised a change of use of a building from use as a "general industrial building" as defined in the above-mentioned Town and Country Planning (Use Classes) Order, 1948, to use as a "light industrial building" as therein defined. There is also authorised a change of use to any type of shop of a building which before such change is used as a fried fish shop, or a tripe shop, or a shop for the sale of pet animals or birds, or a cats-meat shop.

As to those particular changes of use which, under Class III of the General Development Order, are brought within the scope of permitted development, reference may be made to the observations at p. 211, *ante*, dealing with Class I of the use classes specified in the Schedule to the Town and Country Planning (Use Classes) Order, 1948.

CLASS IV

Temporary uses. Under this class is authorised the use of open, unbuilt land for any purpose for a period or periods which in the aggregate do not exceed twenty-eight days in a calendar year, and the erection or placing of movable structures on the land in connection with such temporary use. The use of a field for an agricultural show and the erection of a marquee, etc., in association therewith, would be authorised as a temporary use under this class.

CLASS V

Uses by members of recreational organisations. Under this class open, unbuilt land *not* within the curtilage of a dwelling-house may be used by members of a recreational organisation which holds a certificate of exemption under s. 269 of the Public Health Act, 1936.

CLASS VI

Agricultural buildings, works and uses. This class will be important from the farmers' point of view for it authorises the erection on agricultural land of (*inter alia*) certain buildings (not used for human habitation and not exceeding specified dimensions); silos not exceeding 14 feet in height; wells and reservoirs and water tanks provided the latter do not exceed 14 feet in height nor 20,000 gallons in capacity; straw pulping plants, hop-pole tarring plants, sheep dipping accommodation and lambing pens; roadside stands for milk churns (but not when they would abut on a trunk road or a classified road); and also the winning upon land occupied with agricultural land of minerals reasonably required for the purposes of the agricultural land, *e.g.*, for fertilisation and for the improvement of agricultural buildings.

Note that agriculture includes horticulture (s. 119 (1)) and that, therefore, the erection of small glasshouses could be a permitted development.

Class VII

Forestry buildings and works. Under this class are authorised buildings used for forestry purposes provided (1) they are not of stone, concrete or brick, and (2) do not exceed 300 square feet and a maximum height of 13 feet, and (3) are not used for human habitation.

Class VIII

Development for industrial purposes. This class applies solely to development carried out by an "industrial undertaker" as defined in the Order (art. 2 (1)), and relates to the provision of certain private roads and railways, sewers, mains, etc.; the installation of certain plant and machinery; and the deposit, subject to limitations, of waste material.

Class IX

Repairs to unadopted streets and private ways. Under this class abutting owners (*inter alios*) are authorised to repair the highway (as yet unadopted by the local authority) on which their own premises abut.

Class X

Repairs to services. This class authorises the repair of sewers, underground telephone wires, and similar services, by the appropriate authorities.

Class XI

War-damaged buildings, works and plant. Under this class is authorised the replacement of war-damaged buildings, works or plant, provided the cubic content thereof is *not increased at all*, and, provided further, that the replacement does not involve a material alteration of the previously existing external appearance.

The limitation in this class on cubic capacity should be noted. If there is any increase at all in the cubic capacity of the original building then express planning permission from a local planning authority will be required, and this will be so even if the increase in cubic capacity is within the one-tenth increase referred to in para. 1 of Part I of the Third Schedule to the Act.

In connection with development falling within this class, reference should be made to the observations in paragraph 15 of this article below.

CLASSES XII TO XXI

The remaining classes of permitted development are not of sufficiently general application to call for individual comment here.

15. The Minister or a local planning authority may make a direction which will have the effect of removing from the category of permitted development any development specified in the direction (art. 4 (1)). Any such direction made by a local planning authority will require the Minister's approval (art. 4 (2)). Any direction made under the Town and Country Planning (General Interim Development) Order, 1946 (or any of its predecessors) and still in force when the 1946 Order terminates (as it will do) on the coming into operation of the General Development Order, 1948, continues to be effective on and after July 1, 1948 by virtue of art. 4 (5) of the latter Order. This is important in connection with development falling within Class XI (mentioned above) relating to the replacement of war-damaged buildings, works or plant because some local planning authorities have had this particular class of development *excluded* from the category of permitted development (and thereby made subject to control by the local planning authority) by means of a direction made and approved under the above-mentioned 1946 Order. In those areas where this has been done, it should be remembered that the local planning authority will continue to have control over the replacement of war-damaged buildings, works and plant, notwithstanding that these matters are included in Class XI of the General Development Order, 1948.

16. Before leaving the matter of permitted development it may be as well to emphasise that development is not necessarily exempted from liability for development charge by reason only of the fact that it is included within one of the classes of permitted development contained in the First Schedule to the General Development Order. Permitted development is simply development in respect of which planning permission is *granted* by the General Development Order

itself, with the result that no application for planning permission need be made to any local planning authority in respect thereof. Whether the particular type of permitted development which it is sought to undertake will be exempted from liability to development charge will depend upon whether or not that particular type of development is so exempted by virtue of the provisions of s. 69 (2) (*a*) and the Third Schedule to the Act (as now read in conjunction with the Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948) and the provisions of the Town and Country Planning (Development Charge Exemptions) Regulations, 1948 (SI 1948, No. 1188) made under s. 69 (2) (*b*) of the Act : see p. 236, *post.*

Method of Applying for Planning Permission

17. Assuming that development which it is sought to undertake is development within the meaning of the Act in respect of which planning permission is *not* automatically granted by the Town and Country Planning (General Development) Order, 1948, then, in such case, it will be necessary for planning permission in respect thereof to be obtained from the appropriate local planning authority (s. 13 (1) (*b*)).

18. The *method of applying* for such permission is now dealt with in the Town and Country Planning (Making of Applications) Regulations, 1948 (*ante*, p. 82). These Regulations relate to *the method* of applying for (a) planning permission, and (b) determination of development charge. Separate applications for these two matters must be made on separate forms obtainable from the offices of local planning authorities, and also from county district councils. Applications for bye-law consent for building plans will continue to be required. Three applications will thus have to be made but they may be sent in together to the same office, *i.e.*, to the office of the appropriate county borough council or county district council.

It has not so far proved possible for the Minister, acting under s. 102 (2) of the Act, to make the regulations originally envisaged by him relating to the combination in a single document of applications for planning permission, determination of development charge and bye-law consent. Thus, an applicant needing bye-law consent, planning permission and determination of development charge (and this will be the general type of applicant) will require to obtain from the appropriate local authority sets of three different forms and having duly completed them must return them to the authority from which they were obtained, together with such number of copies, plans, etc., as may be requested.

Method of Dealing with Applications for Planning Permission

19. The method of applying for planning permission in those cases in which such application is necessary, *i.e.*, in the case of development which is not " permitted development ", is dealt with (as has been shown) in the Town and Country Planning (Making of Applications) Regulations, 1948. The method of dealing with such applications once they have been made is dealt with in the Town and Country Planning (General Development) Order, 1948, and entails consideration of portions of the General Development Order not already considered above in connection with " permitted development ".

20. Upon receipt of an application for planning permission the receiving authority must send to the applicant a notification that his application has been received (art. 5 (2)). The actual wording of the notification is set out in Part I of the Second Schedule to the General Development Order (see *ante*, p. 167).

The period during which a local planning authority must give notice of its decision on the application will, generally speaking, be *two months*, but in the case of an application affecting a trunk road it will be *three months*, and in the case of an application referred to in para. 1 of Class XIX of the First Schedule to the General Development Order (which relates to development by mineral undertakers) it will be *eighteen months*, but all these periods may be extended by agreement in writing between the parties (art. 5 (3)).

The decision of the local planning authority upon an application must be in " writing ", which expression, by virtue of s. 20 of the Interpretation Act, 1889, includes printing, lithography, photography, and other modes of representing words in visible form (art. 5 (4)). If conditions are attached to the grant of permission, or if there is a total refusal of permission, the reasons therefor must be given in writing, together with a notification set out in the terms of Part II of the Second Schedule to the General Development Order (art. 5 (4), and see p. 168, *ante*).

If the applicant does not hear from the local planning authority within the appropriate period, then his application is deemed, under s. 16 (3) of the Act, to have been refused.

21. There is a right of appeal to the Minister against the decision of a local planning authority (s. 16 (1) of the Act), and notice of appeal must be given to the Minister within one month of the receipt of the local planning authority's decision or of the expiry of the appropriate period of time within which such decision is to be given (art. 11 (1) of the Order). It will be noticed that the period for lodging the appeal is *one month.* "Month" is not defined in the General Development Order but, by virtue of art. 2 (2) of the General Development Order, and s. 3 of the Interpretation Act, 1889, the expression "month" means a calendar month. This is a welcome provision. At present, an appeal to the Minister against a refusal of permission for interim development has to be made within twenty-eight days. It will obviously be a much easier matter to calculate the period of one calendar month from any given date than it is to calculate (as is necessary at present) the period of twenty-eight days.

22. The General Development Order contains further provisions relating to the giving of directions by the Minister restricting the right of a local planning authority to grant planning permissions (art. 6), and to the holding of consultations with specified bodies before planning permission is given for development affecting trunk roads (art. 7), or affecting certain other specified matters, *i.e.*, land in the area of a neighbouring local planning authority; the amount of traffic using a trunk road or a railway level crossing; a means of access to any road (other than a trunk road) for which the local planning authority is not also the local highway authority; the erection of certain buildings in an area of proposed coal working; development within certain distances of the Royal Palaces or Parks; and certain kinds of development within the area of a metropolitan borough (art. 9 (1)). Permission for development of land for agricultural purposes must not be refused or granted subject to conditions (art. 9 (2)) without consultation with the appropriate County Agricultural Executive Committee constituted under the Agriculture Act, 1947.

23. Under s. 15 of the Act and art. 10 of the General Development Order, an application for planning permission may be referred to the Minister for determination by him instead of by a local planning authority. If this is done, the applicant must be informed accordingly and told that if he so desires he may appear before, and be heard by, a person appointed by the Minister (art. 10). In other words, in the exceptional case in which an application for planning permission is dealt with

by the Minister, the applicant has a right of audience before the Minister's representative, but if such an application is dealt with (as it normally will be) by a local planning authority, the local planning authority may determine the application *ex parte* without hearing the applicant at all. There is, of course, nothing to prevent an applicant requesting a hearing by the local planning authority, and nothing to prevent the local planning authority granting such a request if it so desires.

GARAGES

1. The building or erection of a garage always requires express planning permission: s. 12 (2); General Development Order, Class I.

2. The building or erection of a garage within the curtilage of a dwelling-house does not attract development charge if the tolerance of one-tenth or 1750 cubic feet is not exceeded: Sched. III, para. 3, read with s. 112 (2); Development Charge Exemptions Regulations, Class 1 (contrast Class 5).

Planning as Affecting Interests in and Value of Land

By E. J. RIMMER and J. STUART DANIEL, Barristers-at-Law

I. Main Consequences of the Act of 1947 (*ante,* p. 15).
II. Compulsory Acquisition (*ante,* p. 71).
III. New Principles of Compensation for Compulsory Acquisition (*ante,* p. 132).
IV. **Claims on the £300 million Fund.**
V. Development Charges.
VI. Mineral Rights and other Special Cases.

IV. Claims on the £300 Million Fund

1. Part VI of the Town and Country Planning Act, 1947, provides for payments out of a central fund of £300 million in respect of interests in land which are depreciated in value in consequence of the Act, that is to say, the development value of the land which on the appointed day is transferred from the owner to the State.

2. It cannot be too strongly emphasised that those who have an interest in land which they consider possesses development value (including re-development value) must make their claim now or never. The payments out of the fund will be made once and for all. In the original Explanatory Memorandum to the Bill it was stated: "The Government take the view that owners who lose development value as a result of the passing of the Bill are not on that account entitled to compensation. They recognise, however, that, if no payments were made, hardship would be caused in many cases . . ." The whole scheme is therefore a temporary and transitional measure designed to soften the blow.

3. The period within which claims may be made has now been prescribed by the Claims for Depreciation of Land Values Regulations, 1948 (SI 1948, No. 902), summarised *ante*, p. 142. The period begins on July 1, 1948 (the appointed day), and ends on March 31, 1949. The Board may extend the time limit in exceptional circumstances, but not in any case beyond June 30, 1949. Generally speaking therefore all

claims must be in before the end of next March, and landowners must lose no time, for if they are late they will lose all right to a payment out of the fund.

4. Briefly the machinery will be that on receipt of a claim (which may or may not give an estimate of the development value) the Central Land Board will determine the development value and notify the claimant of the amount. If the claimant disputes the amount he may go to arbitration under the Acquisition of Land (Assessment of Compensation) Act, 1919, and the arbitrator may direct an alteration of the amount previously determined. When development values have been determined for all the land in respect of which claims are put in, then the Treasury will make their scheme, which will be known as the "Section 58 Scheme", for the distribution of payments. It must be remembered that the £300 million will have to suffice for payments in Scotland as well as in England and Wales. By s. 58 (2) of the Act the Treasury will first make a broad apportionment between Scotland on the one hand and England and Wales on the other; then, under s. 58 (3), they will make their scheme for distribution of the sum apportioned to the latter countries.

5. The distribution of payments will clearly not be possible for some years. The time limit is put by the Act (s. 65 (2)) at not later than five years after the appointed day, that is to say June 30, 1953. The nature of the distribution and the probability of priority being given to certain classes of claimants are as yet largely matters of conjecture. These points are touched on at the end of this article. But the pressing matter at the moment is the making of a claim and this is the main topic now to be considered.

Who May Claim

6. First of all who is entitled to make a claim? Broadly speaking it is anyone who on the appointed day holds either a freehold or leasehold interest in land. By s. 60 (3) of the Act:

> "A claim for a payment . . . may be made in respect of any interest in land being an interest in fee simple or a leasehold interest as defined by this Act."

By s. 119 (1):

> "'Lease' includes an underlease and an agreement for a lease or underlease, but does not include an option to take a lease or a mortgage, and 'leasehold interest'

> means the interest of the tenant under a lease as so defined."

It will be seen that neither an option to take a lease nor a mortgage are within the definition. It seems, therefore, that mortgagees will not be entitled to make any claim. While their interests may be protected when the stage of payment is reached (see s. 58 (4)) by the provisions of the Section 58 Scheme, they would be well advised to ensure that their mortgagors do in fact make a claim within the proper period. Claims may be made by those persons whose interests have been compulsorily acquired before the appointed day on a notice to treat served after the passing of the Act, for in this case the compensation paid in respect of the purchase will have excluded development value, and the right to make a claim under this part of the Act is, accordingly, expressly preserved by s. 91 (2). On the other hand, if land is acquired after the appointed day on a notice to treat served *before* the passing of the Act, the owner will not be entitled to claim since in this case his compensation on purchase will have included development value (s. 91 (1)).

By s. 60 (4) a claim may be made in respect of such land as the claimant thinks fit, and different claims may be made by the same person in respect of different parcels of land.

The Procedure for Claiming

7. If the "owner of an interest in land" as described above considers that his land has a development value, then he must set about making his claim. The establishment of claims is dealt with by s. 60 of the Act, but this section is largely enabling and the details of the procedure are to be found in the Claims for Depreciation of Land Values Regulations (quoted above). The Central Land Board have issued a Claim Form (Form S.1) and an Explanatory Pamphlet (Form S.1.A). These forms, the Regulations and the Act should complete the library of the intending claimant.

8. Broadly speaking, it may be said that the claimant will be required to give all information relative to the land in respect of which he claims and of his interest in it to enable the Board to assess (*a*) the unrestricted value, and (*b*) the restricted value of his interest, the difference representing the development value. Reg. 3 indicates under twenty-five headings what this required information is, and the Claim Form S.1 is designed to ensure that such information will

be forthcoming. No indication is given as to whether or not the failure to answer one or more of the questions will invalidate the claim so as to make it wholly inoperative as a claim made within the prescribed time, but it will no doubt be necessary for the owner to make a *bona fide* effort to answer every question to give "due and punctual compliance with the Regulations" and to make the necessary declaration that the statements are to the best of his knowledge and belief true.

In due course it will be necessary to consider these questions in more detail, and in particular those dealing with mineral rights and special cases. These latter include building sites and land upon which improvements have been made preparatory to development.

Assessment of Claims

9. It is specially to be noticed that it is the express responsibility of the Board to determine the development values and that it is not an obligation upon the claimant himself to have a valuation made of the amount of his claim. Indeed, the Board clearly recognise that a claimant's own valuation will be of no assistance to them, but they invite, by the optional part of Form S. 1, the claimant to employ a professional valuer to complete this part and give his certificate of valuation, it being understood that if he does so the fees of the valuer, based on the valuation eventually accepted by the Board, will be paid by the Board.

One of the interesting questions which arises here is whether or not it will be in the interest of the owner to employ a valuer to make the valuation and give a certificate or, in the first instance, to await the determination of the value of his development interests by the Board.

10. The estimate of development value will have to be made by careful reference to s. 61 of the Act. The principle, which will already be familiar to the reader, is that development value is the difference between the restricted and unrestricted value on the appointed day. The restricted value is to be calculated on the assumption that planning permission for Third Schedule development only would be granted; the unrestricted value is the value the land would have had on the appointed day if the Act had not been passed. The calculation is, in both cases, to be made by reference to prices current immediately before January 7, 1947: the interest to

be valued will be treated "as if it had been subsisting immediately before that date with all incidents to which it is subject on the appointed day (being incidents which are relevant to the calculation of the restricted or unrestricted value of that interest as the case may be) . . ." (s. 61 (5)).

11. The incidents which will affect the assessment of unrestricted value will need careful consideration in every case, and it is hoped that this aspect of the matter may be dealt with in detail in a later article. But, clearly, one of the factors which may come into play is the effect on the market value of previous planning control. The original Explanatory Memorandum stated: "The 'unrestricted value' will take into account any compensation which would be payable under present law when a planning scheme came into force, to the extent that such compensation is reflected in current market value". It may be necessary, therefore, in so far as these matters affected the market value, to consider whether the most profitable development now envisaged would have conflicted with a planning scheme under the old law, or what the prospects of obtaining interim development permission would have been, and in either case what were the prospects of receiving compensation for refusal of permission to develop. Restrictive covenants and the prospects of their modification under s. 84 of the Law of Property Act, 1925, may also be relevant in this connection. In the case of interests in land used for the purpose of winning and working minerals special considerations will apply and reference should be made to the Town and Country Planning (Minerals) Regulations, 1948.[1]

12. Where land is used for the display of advertisements no account is to be taken, in calculating the restricted value, of any powers given by regulations under the Act to require discontinuance of such a use (s. 61 (3)).

If the land in respect of which a claim is being made is held with other land, then certain deductions must be made (s. 61 (6)) in computing the unrestricted value. These are:

(*a*) an amount equal to the compensation (if any) which would accrue for severance of the land under claim from the other land if the land under claim were compulsorily acquired;

(*b*) if the value claimed depends on development which would injuriously affect the other land, an amount equal to the compensation, if any, which would accrue therefor if the land under claim were compulsorily acquired.

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[1] At the time of writing these Regulations have been published and are awaiting approval by Parliament in accordance with s. 81 (5).

Similarly, by s. 61 (7), allowance must be made for loss in the nature of disturbance which would result from any development, the prospect of which is taken into account in fixing the unrestricted value.

S. 62 applies rules (2), (3) and (4) of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, to the computation of restricted and unrestricted values on the analogy of compulsory purchase. This section also provides that certain assumptions shall be made in the case of leases, excludes mortgages from the computation of values, and—a final flourish—declares that restricted or unrestricted values, or both, may be a minus quantity.

Disputed Assessments

13. When claims have been completed they will be valued by District Valuers, and it is clear that the Board will afford an opportunity to negotiate. Under Reg. 12 the Board must, before determining the development value, serve a notice in writing upon the claimant stating the proposed development value and the amounts of the restricted and unrestricted values from which this is calculated. The claimant will then have sixty days within which to give notice in writing of any objection and to make counter proposals. This is presumably the stage at which negotiation may occur. After considering the grounds of any objection the Board will determine the development value and notify the claimant. If the claimant takes no further action this determination will normally be final for the purposes of the Section 58 Scheme, but (see Reg. 14) the Board may, in certain circumstances, vary their determination.

14. If the claimant is not satisfied with the Board's determination he may take the matter to arbitration. The procedure for this is governed by Reg. 13. Notice of dispute must be given within thirty days of the determination and the case will then be referred to an Official Arbitrator in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919. The arbitrator may either confirm the Board's determination or direct the Board to alter it to such an amount as he thinks proper. If he directs an alteration he must state the restricted and unrestricted values on which he has based his direction. In either case the determination will then become conclusive for the purposes of the Section 58 Scheme, subject to any directions of the High Court

in proceedings arising out of the arbitration. At any time after notice of dispute, and before the arbitrator has made his award, the claimant and the Board may settle the matter by agreement of the development value in writing.

15. So far as payments out of the fund are concerned it will, of course, be in the claimant's interest to secure as high a determination as possible. His bias will naturally be to keep the restricted value low and to inflate the unrestricted value. But it must be remembered that, in many cases, it may not be in his interest to pursue such a policy in a single-minded manner. Sooner or later, development charges will have to be paid for most of the development, the value of which must be estimated in the claim. Then the boot will be on the other foot. It will be in the landowner's interest to put the restricted value high and the unrestricted value low. But the records of his claim will be there to confute him if he strays from the path of objectivity. This question has been very clearly dealt with by the chairman of the Board (see meeting of the Royal Institution of Chartered Surveyors, reported in *The Estates Gazette*, May 8, 1948): "If *we* have to make a valuation on a similar basis for the same property for a D and an S job, you will expect *us* to give the same answer for both and to stick to it. We shall expect the same from you". The tendency of the landowner, therefore, to put a high figure on the vanishing asset of development value should be tempered by his own interest, and the result should be an impartial and objective computation. Moreover, if landowners find it difficult to be impartial they should bear in mind that, whereas payments out of the fund will almost certainly be less than the development value as determined by the Board, development charges will, in all probability, be 100 per cent. of that value.

The Right to Receive Payments

16. S. 64 provides that the right to receive a payment shall vest primarily in the owner of the interest on the appointed day, that is that say, the person in whom the legal estate is vested, or, if the interest is a tenancy under an agreement for a lease, the person entitled to have vested in him the legal term. This is subject to any provisions as to the disposal of payments which may be included in the Section 58 Scheme. The right to receive payment will be transmissible by assignment or operation of law, but assignment will be of no effect (see Reg. 7) unless notified to the Board before December 31, 1952. S. 64 also makes provision for certain special

cases such as where the estate is vested in trustees for charitable or ecclesiastical purposes who are not entitled to act in the trust, or in the Probate Judge.

Certain small claims are excluded by s. 63 of the Act. No payment will be made if the development value, averaged over the land, is not more than £20 per acre, or is not more than one-tenth of the restricted value. In calculating whether the development value exceeds one-tenth of the restricted value, a rentcharge to which the land is subject may be ignored, and in the case of a leasehold interest the rent will be assumed to be the rent of a peppercorn. Prospective claimants will, no doubt, take this limitation into consideration in deciding whether or not to make a claim under this Part of the Act.[1]

The Section 58 Scheme

17. As to the Section 58 Scheme a great deal has been said in memoranda and in speeches by the Minister which indicates that, on the one hand, there may be other exclusions, and on the other, that there will be a system of priorities.

There is little point in canvassing in detail the form which the scheme will take. It is not until all the claims have been considered and the development values determined that the framers of the scheme will know the precise nature of the problem before them.

Two points should, however, be stressed. The sum of £300 million has been fixed, not perhaps in an arbitrary manner, but necessarily without full information as to the size and nature of the claims which it is designed to meet. The general opinion is that it will certainly not be adequate to allow of anything like a full satisfaction of claims. It would be idle to speculate on the proportion, but it may be confidently assumed that some scaling down will have to be done.

18. The second question is whether the scaling down will be even handed, or whether any claimants or types of claimants will be given priority. The Board's Explanatory Pamphlet states that " it cannot be assumed that all payments will be made on an equally favourable basis ". In the Notes for the Guidance of Buyers and Sellers, published by the Ministry (P.R.I., dated October 23, 1947) it was said: " When the Bill was first presented to Parliament, however, it was indicated that this sum was being made available to meet cases of hardship, and in considering hardship a distinction

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[1] See, hereon, W. A. Leach's article, *ante*, pp. 185, 186.

may well be drawn between transactions which took place before the Bill was published, and those taking place after full public notice had been given of the terms of the Bill ". This is a clear indication of one possible ground of distinction.

Special Cases

19. But the most interesting, though yet undetermined, question is how far special cases will rank for preference payments. It is now fairly clear that building sites will do so. When the Bill was in committee (see Official Report, Standing Committee D, Nineteenth Sitting, March 26, 1947) the Minister in announcing the " near ripe scheme " said : " Any building developer having land in his ownership at the date of publication of the Bill, on which he hopes to build, will be able to apply for special treatment under the Treasury scheme. He will be asked to provide evidence as to the rate at which he was building over some suitable pre-war period, say 1934–39. An estimate will be made of the amount of land needed for such a five-years' programme, and on that portion of his land . . . he will, in due course, receive a payment out of the £300 million equal to that value ". The Minister then indicated that the builder would not suffer development charges greatly, if at all, in excess of the payments with which he would be credited. The Chairman of the Central Land Board is reported to have stated recently (see *Times* newspaper, June 16, 1948) :

> " In the case of ' near dead ripe ' land the development charge will be set off against the figure for compensation and no money would change hands ".

This seems to assume that a 100 per cent. payment will be credited in such cases.

20. The Minister, when making the announcement quoted above, also stated that he was exploring the possibility of securing a similar arrangement in the case of other persons (*i.e.*, not regular builders) who already owned land on which they intended to build. Lord Henderson has stated in the House of Lords (see *Hansard*, House of Lords, June 3, 1948) that such cases will come within the near-ripe scheme. He also stated that it was intended to have a near-ripe scheme for minerals on the same lines as that already announced for builders.

Until the value of these, and possibly other, preference payments has been determined no estimate can be made of what (if any) part of the £300 million will remain for distribution amongst other claimants.

Certainly, today, it is impossible for any owner to forecast the value of a claim under Part VI of the Act, and it is understood that valuations for probate are proceeding on the basis of the restricted value of the deceased's interest in land.

21. It is not proposed to consider here the question of satisfaction of payments. This will normally be made in Government Stock, and the relevant provisions of the Act will be found in ss. 65 to 67.

Additional Payments in Respect of Certain War-Damaged Land

22. Mention must be made of s. 59, which authorises the Treasury to make a separate scheme for the making of additional payments in respect of certain war-damaged land which suffers a depreciation of development value as a result of the Act. If the land qualifies for a value payment the amount of this may have been reduced by the prospect of development; for it is calculated on the difference between the pre-damage and after-damage value, and if the after-damage value had an element of development value (apart from the making good of the war damage) it will have reduced *pro tanto* the value payment. The payments will be made in cash and will not be a charge on the £300 million fund.

Ministry of Town and Country Planning Circulars

[continued from p. 172, *ante*]

Circular No. 45, dated May 28, 1948. Model Form of Application for Planning Permission (2d.).

Circular No. 48, dated June 10, 1948. Notifying the making of the T. & C. P. (Enforcement of Restriction of Ribbon Development Acts) Additional Regulations, 1948 (1d.).

Circular No. 49, dated June 10, 1948. Notifying local authorities that they will be supplied with leaflets and posters in relation to the Act.

Question and Answer [1]

The following conversation may be supposed to take place between an owner of property, Sir Orquard Question, and a solicitor, Mr. Dusty Answer, on July 1, 1948.

Q. So this is the Appointed Day. What does one do now?

A. I think the first thing to do is to set about making claims for loss of development value. And, if you have any land ripe for development under s. 80, you should apply to the Minister for a certificate.

Q. I get so muddled up with these expressions. What is this development value which I have lost?

A. The depreciation in the value of the land due to having the right to develop it taken away by the Act.

Q. Oh yes. Claim on the fabulous £300 millions. Do you suppose we shall ever get a penny out of that?

A. You won't if you don't claim.

Q. People say that the mineral owners' claims alone could swallow up the whole £300 millions. They say that builders with near-ripe land are going to get first cut at the joint. It doesn't sound as if the ordinary claims are going to be worth the paper they are written on.

A. No! No! That is going much too far. I should get your agent on to making your claims right away. They should be in by the end of March next year [2] and I expect there will be a frightful rush to make claims when the time is running out.

Q. Yes, but look at all the late war damage claims. I had one accepted years late.

A. Maybe, but the Regulations [2] lay down June 30, 1949, as a deadline for late applications.

Q. I expect you are right. Have you any ideas as to what my claim should be?

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[1] Mr. Answer desires it to be known that when he made the replies recorded on p. 141 *ante*, he had not seen the General Development Order printed on p. 162 *ante*, under Class XI of which permission is given to reinstate war damage. But it is to be observed that if the cubic content is to be increased or the external appearance is to be materially altered, express planning permission must be obtained; see *ante*, p. 216.

[2] Claims for Depreciation Regulations, 1948, *ante*, p. 142.

A. The claim is to be the difference between the restricted and unrestricted value of the land.

Q. I understand well enough what the restricted value is but what do I take to be the unrestricted value?

A. I think—it is only my opinion—that it is the market value calculated at prices current on January 7, 1947,[3] on the footing that you could carry out any development or re-development which would not have been illegal.

Q. What do you mean by illegal?

A Contrary to any statutory provision or to a Planning Scheme in operation at that date.

Q. Suppose there was no Planning Scheme in operation but only interim development control?

A. Then I think if you have already applied for permission for the particular development and have been refused, your chances of ultimate compensation would have to be measured.[4] But if you have *not* applied for permission, then I think you could assume for the purpose of your claim that you would have been entitled to carry out any suitable development unless it would conflict with public health or building restrictions or with restrictive covenants and so on.

Q. Even if it was pretty unlikely that I should get the permission?

A. Yes.

Q. So if I have a row of old houses, I could assume that I could pull them down and put up a block of flats or a block of offices or, in a suitable area, a factory—whichever is the most profitable development?

A. That is what I think. There is—again this is only my own opinion—a limiting factor, and that is that since you would have very little chance of getting your block of flats or offices or factory built for some years, and therefore could not realise your development value for that time, your claim must be scaled down correspondingly.

Q. But who is going to do the scaling down—Sir Orquard Question or Sir Malcolm Eve?

A. That raises a very interesting point. In the form of claim —S. 1—it is optional whether you set a value on your claim or not.

Q. What difference does that make?

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[3] See s. 61 (5).

[4] See hereon *ante*, p. 125 and *ante*, p. 226.

A. If you engage a professional valuer to make a quantitative claim and to certify its correct value the Central Land Board will contribute to the costs of the valuer.

Q. That is kind of them but it does not amount to much. What is the alternative?

A. If you do not set a figure on your claim it seems to me that the Central Land Board must do so.

Q. Suppose they put some absurdly low figure on it.

A. I hardly think they will do that but they might assess it at something less than you think it is worth.

Q. Then I should appeal against it.[5]

A. Yes, but you might prefer to swallow the insult.

Q. Why?

A. If you are going to develop the land it would be better to have a low development charge than a high one.

Q. What has that to do with development value?

A. Only this, that the development charge cannot for some time, on any calculation, be larger than the amount fixed by the Central Land Board as the development value.

Q. I see. That is quite a thought, isn't it?

A. On the other hand if you have no intention whatever of developing the land, it would be to your interest to obtain as high an assessment of the development value as you can.

Q. But supposing at some later date I do decide to develop the land. The Central Land Board will then hold my claim up against me and assess a development charge to match.

A. There is that risk. But the development value has—if I am right—to be based on the most profitable practical development possible whereas the development charge has to be assessed with reference to the particular development proposed.[6]

Q. I think that is enough to think about—even on the Appointed Day. I'll discuss my " ripe for development " land another time.

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[5] Regulations may be made under s. 60 (2).

[6] See s. 70 (2).

Statutory Instruments

Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Additional Regulations, 1948

(SI 1948, No. 1126)

[SUMMARISED]

THESE Regulations were made under s. 76 (6) of the Town and Country Planning Act, 1947, and came into operation on July 1, 1948.

The effect of reg. 3 is that where any works on land existing on July 1, 1948, were carried out or any use to which land is put on that day was begun in accordance with permission granted subject to conditions under s. 1 or s. 2 of the Restriction of Ribbon Development Act, 1935 (25 & 26 Geo. 5, c. 47), the provisions of Part III of the Act of 1947 (control of development, etc.) apply to those works or that use as if the conditions had been imposed on the grant of planning permission under Part III. The provisions of sub.-ss. (2) to (5) of s. 76 of the Act of 1947 have effect accordingly, subject to the provisions of regs. 4 and 5 below.

Reg. 4 provides that s. 76 (5) of the Act of 1947, is to have effect as though the reference therein to planning control within the meaning of the Building Restrictions (War-Time Contraventions) Act, 1946 (9 & 10 Geo. 6, c. 35) included a reference to the provisions of s. 1 or s. 2 of the Act of 1935.

Reg. 5 provides that for the purposes of reg. 3, any works or use in respect of which a notice has been served under s. 1 (1) of the Restriction of Ribbon Development (Temporary Development) Act, 1943 (6 & 7 Geo. 6, c. 34), or is deemed by virtue of sub-s. (4) of that section to have been so served, shall be treated as carried out or begun in accordance with permission granted subject to a condition restricting the period for which the works or use may be continued on the land.

It is to be noted that these regulations are additional to those concerning the enforcement of the Restriction of Ribbon Development Acts to be made under sub-s. (8) of s. 75 of the Act of 1947.

Town and Country Planning (Development Charge Exemptions) Regulations, 1948 [1]

(SI 1948, No. 1188)

Made	*April* 29, 1948
Coming into Operation	*July* 1, 1948

THE Minister of Town and Country Planning (hereinafter called "the Minister") in exercise of the powers conferred on him by proviso (*b*) of sub-s. (2) of s. 69 of the Town and Country Planning Act, 1947 (hereinafter called "the Act") and all other powers enabling him in that behalf hereby with the consent of the Treasury makes the following Regulations.

Citation, Commencement and Interpretation

1. These Regulations may be cited as the Town and Country Planning (Development Charge Exemptions) Regulations, 1948, and shall come into operation on the appointed day.

2.—(1) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(2) In these Regulations, unless the context otherwise requires, the following expressions have the meanings respectively assigned to them, namely :—

> "the appointed day" means the day appointed for the coming into force of the Act;
>
> "shop" means a building used for the carrying on of any retail trade or retail business wherein the primary purpose is the selling of goods (excluding refreshments other than light refreshments) by retail, and without prejudice to the generality of the foregoing includes a building used for the purposes of a hairdresser, undertaker, ticket agency or receiving office for goods to be washed, cleaned or repaired, or for other purposes appropriate to a shopping area but does not include a building used as an amusement arcade, pin-table saloon, funfair, garage, petrol filling station, hotel or premises licensed for the sale of intoxicating liquors for consumption on the premises and for the

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[1] These Regulations and the Town and Country Planning (Development Charge) Regulations, 1948 (SI 1948, No. 1189), *post*, p. 241, were approved by Resolution of the House of Commons, May 26, 1948, and the House of Lords, June 3, 1948, in accordance with ss. 69 (5) and 70 (5) respectively of the Town and Country Planning Act, 1947. See hereon, *post*, p. 245.

purposes of this definition the expression "light refreshments" means eatables not cooked on the premises, and beverages;

"industrial process" means any process for or incidental to any of the following purposes, namely—

(*a*) the making of any article or part of any article, or

(*b*) the altering, repairing, ornamenting, finishing, cleaning, washing, packing or canning, or adapting for sale, or breaking up or demolition, of any article, or

(*c*) without prejudice to the foregoing paragraphs, the getting, dressing or treatment of minerals,

being a process carried on in the course of trade or business, and for the purposes of this definition the expression "article" means an article of any description, including a ship or vessel;

"industrial undertaking" means an undertaking (other than a statutory undertaker or the National Coal Board) by which an industrial process is carried on;

"industrial building" means a building (other than a building in or adjacent to and belonging to a quarry or mine and other than a shop) used for the carrying on of any industrial process;

"private way" means a road or footpath which is not a highway.

Exemptions from Development Charge

3. Operations and uses of any description specified in the Schedule to these Regulations shall be exempted from the provisions of Part VII of the Act.

SCHEDULE

Class 1.—Rebuilding and Enlargement, Improvement or other Alteration of a Building erected after the Appointed Day:—

The rebuilding and the enlargement, improvement or other alteration as often as occasion may require of any building erected after the Appointed Day so long as the cubic content of the original building (as ascertained by external measurement) is not exceeded, in the case of a dwelling-house, by more than one tenth or 1,750 cubic feet, whichever is the greater, and in any other cases by more than one tenth. Provided that the erection on land within the curtilage of any such building of an additional building to be used in connection with the original building shall be treated as the enlargement of the original building; and where any two or more original buildings comprised in the same curtilage are used as one unit for the purposes of any institution or undertaking the reference in this paragraph to the cubic content shall be construed in relation to enlargement as a reference to the aggregate cubic content of those buildings.

In the preceding paragraph the expression "any building erected after the Appointed Day" includes a building in the course of erection on that day but does not include a building which has been rebuilt in accordance with the provisions of paragraph 1 of the Third Schedule to the Act.

Class 2.—Land used for agriculture and forestry:—

1. The carrying out on land used for any agricultural purpose of any building or other operations (other than the erection enlargement improvement or alteration of dwelling-houses) requisite for the farming of the land for that purpose.

2. The carrying out on land which has been brought into use for the purposes of forestry after the appointed day of any building or other operations (other than the erection enlargement improvement or alteration of dwelling-houses or of buildings used for the purposes of timber-yards or for other purposes not connected with the cultivation or felling of trees) required for the purposes of that use.

Class 3.—Changes of Use in a Building used for more than one purpose:—

1. In the case of any building or other land which is in the occupation of a person by whom it is used in accordance with a planning permission granted or deemed to have been granted under Part III of the Act as to part only for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one tenth of the cubic content of the part of the building used as aforesaid for that purpose, or as the case may be, one-tenth of the area of the land so used.

2. In the case of any industrial building which is in the occupation of a person by whom it is used as to part for one of the purposes included in Classes III to IX of the Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948 and as to part for any other of those purposes the use of any additional part of the building for any of the purposes for which the building is so used.

Class 4.—Deposit of Waste Materials:—

1. The use for the deposit of waste materials or refuse of any land comprised in a site which was at the appointed day used for the purpose of such deposit.

2. The use of any land for the spreading of dredgings.

Class 5.—Buildings within the curtilage of a dwelling-house:—

The erection, construction or placing and the maintenance, improvement or other alteration within the curtilage of a dwelling-house of any building, shelter or enclosure (other than a dwelling, garage, stable, loose-box or coach-house) required for a purpose incidental to the enjoyment of the dwelling-house as such or for keeping poultry, bees, pet animals, birds or other live-stock for the domestic needs or personal enjoyment only of the occupants of the dwelling-house.

Class 6.—Fences, walls, etc.:—

The erection or construction and the maintenance improvement or other alteration of any fences, walls, gates, posts or other similar structures.

Class 7.—Changes of use of certain buildings:—

(The Classes herein referred to are the Classes set out in the Schedule to the Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948.)

1. The use of any type of shop as a shop of any other type.

2. In the case of a building which is used as a general industrial building within Class IV the use of that building as a light industrial building within Class III.

3. In the case of a building which is used as a wholesale warehouse for any purpose included in Class X the use of that building as a repository for any purpose included in Class XI.

4. In the case of a building which is used for any of the purposes included in Classes XIII, XV, XVII and XVIII the use of that building for any other of those purposes.

Class 8.—Temporary uses of land:—

1. The temporary use of land for any purpose for not more than 28 days in total in any calendar year and the erection or placing of moveable structures on the land for the purposes of that use.

2. The temporary use of land as parking ground for moveable dwellings and other vehicles used for the purposes of a travelling circus, roundabout or amusement fair.

Class 9.—Camping:—

The use of any land for camping purposes by the placing thereon of any caravan or tent.

Class 10.—Roadside milk churn stands.

The erection or construction and the maintenance improvement or other alteration of roadside milk churn stands, whether on land used for the purpose of agriculture or not.

Class 11.—Industrial undertakings:—

Where land is used by an industrial undertaking for the carrying out of any industrial process the carrying out on that land of any of the following operations required for the purpose of that process—

(*a*) the rearrangement or replacement of private ways or private railways, sidings or conveyors;

(*b*) the rearrangement of sewers, mains, pipes, cables or other apparatus;

(*c*) the installation or erection, by way of replacement, of plant or machinery.

Class 12.—Unadopted streets and private ways:—

The carrying out of any works required for the maintenance or improvement of an unadopted street or private way.

Class 13.—Repairs to pipes, cables and other apparatus:—

The carrying out of any works for the purpose of inspecting repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose.

Class 14.—Development by local authorities and statutory undertakers:—

The erection construction or installation and the maintenance improvement or other alteration by local authorities or statutory undertakers of:—

(*a*) such small ancillary buildings, works or equipment as may be required for the purposes of any allotments, cemeteries, parking places, open spaces, playing fields, parks, recreation grounds, gardens, public walks or pleasure grounds belonging to or maintained by them;
(*b*) information kiosks, passenger shelters, public shelters and seats, public lavatories, telephone boxes, fire alarms, public drinking fountains, horse troughs, refuse bins or baskets, or such other similar structures or works as may be required in connection with the operation of any public service administered by them;
(*c*) watercourses or land drainage works;
(*d*) sewers, pipes, mains, cables or other apparatus (including gas valve governor houses in a gas distribution system and pumping stations on the line of sewers) in, under or over any land;
(*e*) electrical transmission lines, including feeder pillars, transformer kiosks or service lines;
(*f*) sea or river defence works.

Class 15.—Development by local highway or improvement authorities:—

1. The erection or construction and the maintenance improvement or other alteration by a local highway or improvement authority of buildings or works required in connection with the use, safety or enjoyment of roads.

2. The carrying out of any operations by a local highway or improvement authority for the purpose of searching for, digging, getting and carrying away gravel, sand, stone or other materials without payment under Section 51 of the Highway Act, 1835.

Class 16.—Advertisements:—

The use of any site for the display of advertisements.

Class 17.—Operations carried out under Licence under the Petroleum (Production) Act, 1934:—

The carrying out of any operations necessary for the searching and boring for and getting petroleum and natural gas and for the recovering of casinghead spirit licensed by the Minister of Fuel and Power under the Petroleum (Production) Act, 1934 and the Petroleum (Production) Regulations, 1935, whether by Prospecting Licence or Mining Licence and the erection or construction and the maintenance improvement or other alteration of any buildings (including plant and equipment) certified by the Minister and the Minister of Fuel and Power to fall within a class necessary for the purposes of the said operations.

Class 18.—Peat:—

The winning and working of peat by any person for the domestic requirements of that person.

Town and Country Planning (Development Charge) Regulations, 1948 [2]

(SI 1948, No. 1189)

Made April 23, 1948
Coming into Operation July 1, 1948

WHEREAS the Central Land Board (hereinafter called "the Board") in determining whether any, and if so what, development charge is to be paid in respect of any operations or any use of land, are under a statutory duty by virtue of subsection (2) of section 70 of the Town and Country Planning Act, 1947 (hereinafter called "the Act"), to have regard to the amount by which the value of the land with the benefit of planning permission for those operations or that use, calculated as provided in that subsection, exceeds the value which it would have without the benefit of such permission and are also under a statutory duty not to give any undue or unreasonable preference or advantage to one applicant over another.

And Whereas by subsection (3) of section 70 of the Act it is provided that subject to these statutory duties regulations made under the Act with the consent of the Treasury may prescribe general principles to be followed by the Board in determining under Part VII of the Act whether any and if so what development charge is to be paid thereunder in respect of any operations or use of land and such regulations may in particular provide for securing that the amount of the said charge shall be determined on different principles in relation to operations or uses of different classes or to operations or uses carried out or begun at different periods.

And Whereas by section 111 of the Act, the Minister of Town and Country Planning (hereinafter called "the Minister") may make regulations under the Act for any purpose for which regulations are authorised to be made under the Act and in particular for prescribing anything which by the Act is authorised to be prescribed by regulations.

Now, therefore, the Minister by virtue of the hereinbefore recited powers hereby makes, with the consent of the Treasury, the following regulations:—

Part I.—Interpretation

1.—(1) The Interpretation Act, 1889, shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

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[2] See note 1, *ante*, p. 236.

(2) These regulations may be cited as the Town and Country Planning (Development Charge) Regulations, 1948.

Part II.—General

2. Subject to the provisions of the Act and of any regulations made thereunder and for the time being in force, the General Principles set out in the Schedule to these regulations shall be followed by the Board in determining under Part VII of the Act whether any, and if so what, development charge is to be paid thereunder in respect of any operations or use of land.

SCHEDULE

1. Development charge shall be determined so as to secure, so far as is practicable, that land can be freely and readily bought and sold or otherwise disposed of in the open market at a price neither greater nor less than its value for its existing use. This object is the Governing Principle by which the Board are to be guided in determining development charge.

2. Development charge shall not be more than the amount which, to the satisfaction of the Board, represents the additional value, measured by normal processes of valuation, of the land due to planning permission for a particular development.

3. Development charge shall not be less than the amount referred to in paragraph 2 of this Schedule, unless in the opinion of the Board the charge ought properly to be less in order to comply with the Governing Principle.

4. Where in the special case of any land of a class referred to in Part VIII of the Act (which provides for the application of the Act to special cases) the application of the foregoing principles would, in the opinion of the Board, be inappropriate, the Board shall apply the Governing Principle subject to such modification as is in their opinion appropriate to that special case.

Town and Country Planning Acts, 1944 and 1947 (Registration of Orders and Lists of Buildings) Rules, 1948

(SI 1948, No. 1213)

[SUMMARISED]

These Rules are made under s. 15 of the Land Charges Act, 1925, s. 17 of the Town and Country Planning Act, 1944, and ss. 30, 39 of the Town and Country Planning Act, 1947. They came into operation on July 1, 1948. They supersede the Town and Country Planning (Registration of Orders) Rules, 1945 (S. R. & O., 1945, No. 1677) and provide for the registration in Part VI of local land charges, registers of compulsory purchase orders, compulsory purchase orders containing a direction that the procedure for expedited completion shall apply and declaratory orders. They provide for registration under a new Part X of lists of buildings of special architectural or historical interest registrable under s. 30 of the Act of 1947. Provision is made for search and for the issue of official certificates of search.

Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Regulations, 1948

These Regulations have been made under s. 75 (8) of the Act of 1947, and laid before Parliament for approval in accordance with the proviso to s. 75 (8).

Town and Country Planning (Minerals) Regulations, 1948

These Regulations have been made under ss. 81 (1), 111 and laid before Parliament for approval in accordance with s. 81 (5).

Town and Country Planning (Modification of Mines Act) Regulations, 1948

These Regulations have been made under s. 81 (4) and laid before Parliament for approval in accordance with s. 81 (5).

Book Reviews

Introducing the Town and Country Planning Act, 1947. By Desmond Heap. (The Law Society. 1947. iv and 46 pp. 2s. 6d.)

A Guide to the Town and Country Planning Act, 1947. By R. L. Doble. ("Current Law" Guide No. 2. Sweet & Maxwell and Stevens. 1947. vi and 88 and (Index) 2 pp. 6s. 6d.)

Shaw's Restatement of the Town and Country Planning Act, 1947. By Neville Hobson and Peter Dow. (Shaw & Sons. 1948. xvi and 276 and (Index) 23 pp. 25s.)

The Town and Country Planning Act, 1947. By H. A. Hill and D. P. Kerrigan. (Butterworth's Annotated Statutes. 1948. 290 and (Index) 24 pp. 25s.)

The Town and Country Planning Act, 1947. By Archibald Safford, K.C., and Desmond Neligan. (Hadden, Best & Co. 1948. 322 and (Index) 14 pp. 30s.)

Town and Country Planning Law. By James Kekwick. (Stevens. 1947. xvii and 530 and (Index) 26 pp. 45s.)

The Law of Town and Country Planning. By J. R. Howard Roberts. (Charles Knight. 1948. xxxii and 740 and (Index) 34 pp. 57s. 6d.)

These books differ greatly in scope. Hill-and-Kerrigan and Safford-and-Neligan are annotated editions of the 1947 Act and nothing else. Hobson-and-Dow is a section-by-section paraphrase of the Act, without commentary and with very few cross-references. Of the two smaller books, Heap is almost a section-by-section summary of the Act, while Doble ranges rather more freely over the Act, its background and its significance. Both Kekwick and Roberts are more ambitious. They set out other relevant statutes as well as the 1947 Act (undoubtedly a useful thing to do), and have tables of cases and of statutes; here, clearly, are permanent textbooks in the making. Roberts has the bigger collection of material, and even annotates the other statutes he sets out: the New Towns Act in particular occupies a substantial proportion of his volume. He omits, however, certain interesting Ministry circulars printed by Safford-and-Neligan.

Each of the larger volumes includes an introduction. Hobson-and-Dow's is a brief explanation of what the Act is intended to do; the other four are summaries of its provisions. None of these summaries approaches Heap in clarity or simplicity, and none illuminates the subject as Doble does. Of the four, Kekwick's has the advantage of extreme brevity, while Roberts's gives the historical background.

The cross-referencing of the Act is done best by Safford-and-Neligan, in spite of the extreme brevity of their notes; they also show a precise grasp of the structure of the Act that none of the others can equal except Heap. The practitioner who wants more than cross-referencing will find painstaking commentary in Roberts; or commentary that is sometimes suggestive but not always correct in Hill-and-Kerrigan or in Kekwick. Both Heap and Doble may be useful, too, though they do not explicitly consider the detailed wording of the Act: Doble again being suggestive but not always correct. None attempts what is surely one of the duties of the author of any substantial book: to analyse the wording of the Act, so as to point out verbal difficulties that may some day trap an unwary official or conveyancer, or may provide an astute practitioner with a useful argument.

Hobson-and-Dow is primarily a book for non-legal users. Its paraphrase of the Act is throughout reasonably accurate, and often simplifies the meaning (but sometimes puts a wrong emphasis on a section, making it even less clear than before). The bits of the Act without legal effect are not pruned away or separated out, as they could be. In the almost entire absence of cross-references a fuller Index would be valuable.

Of the five larger books, Kekwick is distinctly the best produced, with Safford-and-Neligan second. Hobson-and-Dow is soundly made; but the typography is irritating. Heap deserves a more durable cover.

T. A. BLANCO WHITE.

Parliamentary Intelligence

Development Charges

The Town and Country Planning (Development Charges) Regulations, 1948, were the subject of debate in the House of Commons on May 26, 1948, and in the House of Lords on June 3, 1948.

The Minister of Town and Country Planning (H. C. Debates vol. 451, col. 301) admitted that the policy which had been declared during the passage of the Bill whereby the Central Land Board would be able to exercise a discretion as to the percentage of the full development charge which it would levy in particular cases had been abandoned as unworkable. Under the Regulations the necessary flexibility would arise in the process of valuation. Thus, in an area where development was desirable in the national interest but was not taking place, since the prospects of development would be small, the development charge would, by the normal process of valuation, be less than in an area where it was not necessary to encourage development to the same extent.

On the question of incentive to develop, the Minister said that the proposed developer would not be paying more than the old market value of the land because the existing use value plus the cost of the development charge equalled the old market value.

Dealing with the question what incentive there was to an owner of land to sell, the Minister protested that he could not see why the owner of land should be given an incentive in that he would obtain the new market value of his land, plus his share, if any, in the £300 million for loss of development value. If, however, inducement was needed it would be found in the powers of the Central Land Board to acquire land for the purpose of ensuring that it is developed.

In calculating the development charge, the Minister said that no reduction would be made for expenditure incurred in servicing the land with roads, sewers, etc., in what is known as outline development. This expenditure will be yet another preferential claim on the £300 millions and be dealt with in the same way as near-ripe land.[1]

In the House of Lords Lord Henderson (H. L. Debates, Vol. 156, col. 239) made a somewhat similar statement, but he brought out one or two fresh points.

The case of owners of single building plots who have paid the full building value for them and who will be charged the full development charge will be dealt with in the same way as near-ripe land.[2]

It is intended to have a near-ripe scheme dealing with mineral undertakers who own their own land on the lines of the near-ripe scheme for builders.

In the same debate the Lord Chancellor (col. 251) stated that Instructions would be issued to the Central Land Board to remit or postpone the collection of development charges in respect of an agricultural dwelling-house so long as the Board are satisfied that the house is reserved for a member of the agricultural population.

Local Land Charges

A question by Brigadier Medlicott in the House of Commons and a written answer thereto by the Attorney-General on May 31, 1948, draws attention to the fact that an order made by the local planning authority under s. 26 of the Act for the discontinuance, etc., of an authorised use or for the alteration or removal of any buildings or works is not registrable as a local land charge until it has been confirmed by the Minister.

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[1] The expression "near-ripe" was first used with reference to land owned by builders as a building reserve. A scheme is being worked out whereby the owners will be credited with the amount of their development values and debited with the development charges on that portion of the land which would have been needed for a five-years' pre-war building programme (see Debates of Standing Committee D of the House of Commons March 26, 1947 (Nineteenth Sitting) cols. 804–808). Apparently this will only apply where the land was acquired before January 7, 1947; cf. Question 20 (a) in the Central Land Board Claim Form, S. 1.

[2] Lord Henderson was speaking, in reply to Lord Hylton, with reference to owners who had bought building plots prior to the 1939 War, but it seems likely that the date will be January 7, 1947; cf. Question 20 (c) in the Claim Form, S. 1.

Notes of Cases

The case of *Chessington Development Co.* v. *Surbiton B. C.*, [1948] L. J. R. 1089; [1948] W. N. 166; [1948] 1 All E. R. 876, turns on the construction of a development agreement under s. 34 of the Town and Country Planning Act, 1932. The agreement concerned was made in 1939, at which date a planning scheme for the area had been submitted to the Minister but not approved: it never was approved. The agreement included certain terms as to what was to happen after the planning scheme came into effect; before then, however (on a true construction of its terms), it provided only that interim development permission should be deemed to have been granted under s. 10 of the 1932 Act for certain specified development.

The war then suspended operations, and it was not until 1946 that development became practicable again. By that time the Town and Country Planning (Interim Development) Act, 1943, had been passed and the Greater London Plan had been drawn up, and it was found that the development agreed to in 1939 conflicted with that plan. The Minister thereupon directed the defendant council to take steps to revoke the development permission given by the agreement, which they proceeded to do. The landowner then sued them for breach of the agreement. The council denied both the breach and the validity of the agreement.

On the issue of validity the council failed : since *Att.-Gen.* v. *Barnes*, [1939] Ch. 110, it was settled that such agreements could validly give development permission. (On the words of the corresponding section of the 1947 Act this is even clearer.) On the issue of breach, however, the council won : in agreeing to give permission under the 1932 Act they had not bound themselves not to revoke that permission if the Legislature should later see fit to empower them to do so, as by the 1943 Act the Legislature had.

Since July 1, 1948, this point also is even clearer, for under the 1947 Act, s. 25 (3) and Sch. X (10), every development agreement, whether made under s. 34 of the old Act or s. 25 of the new, contains a statutory term allowing the Minister and the Authority to go back on their bargain if they want to, in certain circumstances. Exactly what these circumstances are is not clear, for the statute is somewhat ambiguous, but it undoubtedly would cover what was done in the *Chessington Case*.

T. A. B. W.

The Constitution, Powers and Duties of the Local Planning Authority

By J. F. Garner, LL.M., Solicitor

I. **Constitution and Administration.**
II. The Acquisition of Land for Planning Purposes.
III. Development Plans.
IV. Registers under the 1947 Act.
V. Planning Control in Practice.

I. Constitution and Administration

1. In this series of articles it is proposed to review some of the practical problems afforded by the new planning legislation from an aspect not previously fully considered in this *Journal*, namely, that of the local planning authorities and the county district councils. It is hoped, therefore, that these articles will be of assistance both to the legal and other advisers to these authorities, and also initiate the private practitioner into what are sometimes regarded as the esoteric mysteries of the inner workings of local authorities. Esoteric such inner workings have been in the past, but under present-day conditions some knowledge of affairs within the shire and town hall is useful to every private solicitor.

The Local Planning Authority Under the 1947 *Act*[1]

2. Under the 1932 Act the following classes of local authorities had the planning powers stated:

(a) Planning authorities, *i.e.*, those authorities which could prepare a planning scheme, were the Common Council of the City of London, the London County Council, and the councils of county boroughs and county districts. Under s. 2 (2) of the 1932 Act, a county district council could relinquish some or all of its planning powers to the county council, but this power was not often exercised. In many cases, however, adjoining authorities combined to make a joint planning scheme, and often a joint planning committee was constituted to advise on or to administer the scheme.

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[1] In these articles by "the Act" or "the 1947 Act" is meant the Town and Country Planning Act, 1947, and by "the 1932 Act" and "the 1944 Act" is meant the corresponding Acts of those years respectively. References to sections alone are to sections of the 1947 Act. "The Minister" means the Minister of Town and Country Planning.

(b) The interim development authorities, *i.e.*, those empowered to control interim development pending the coming into operation of the scheme, were normally, but not invariably, the planning authorities.

(c) The planning enforcement authorities, *i.e.*, those empowered to enforce the provisions of the scheme when it had become effective, were, dependent on the provisions in the respective schemes, also, normally but not invariably, the planning authorities.

3. This summary of the position under the 1932 Act has been considered necessary as the large number and variety of authorities controlling this important local government service (for this is how planning is regarded in the town hall), a service which can only be adequately administered over areas approximating to geographical units, was the main cause for some of the more important provisions of the new legislation.

4. Under s. 4 (1) of the 1947 Act, the local planning authority will be the county or county borough council, unless the Minister considers it expedient that an *ad hoc* joint planning board should be constituted as the local planning authority for the areas of two or more such councils. A county or county borough council will not, however, be easily deprived of its powers under the Act without its consent, for the Minister is obliged to hold a local inquiry in the event of objections being made to any Order establishing such a board, and the Order, when made, must be laid before Parliament, and is subject to annulment within forty days. If one of these boards is constituted, it will be a body corporate, and will have a constitution reminiscent of that of a joint board set up under s. 8 of the Public Health Act, 1936.

5. A local planning authority is empowered to appoint a planning committee, and to delegate to such committee power to act in all matters except the borrowing of money or the levying of a rate or the issuing of a rate precept (see 1947 Act, Sched. I, para. 4). The need for these provisions is not clear in view of the general power to this effect contained in s. 85 of the Local Government Act, 1933 (but contrast the provisions of the National Health Service Act, 1946, and the National Assistance Act, 1948, under both of which statutes

the local authority *must* appoint a committee for the purposes of the respective Acts). Any two or more local planning authorities may concur in establishing a joint advisory committee to advise them " as to the preparation of development plans and generally as to the planning of development in their areas ", and where he considers it expedient, the Minister may establish such a joint committee by Order; such joint committees are not, of course, bodies corporate.

6. It is important to note that a majority of the members of a planning committee of a local planning authority must be members of the authority (Sched. I, para. 6). This provision should be compared with s. 85 (3) of the Local Government Act, 1933, under which a committee of a local authority " may include persons who are not members of the local authority, provided that at least two-thirds of the members of every committee shall be members of the local authority ". Presumably the " two-thirds " rule does not apply to the present Act, but the power to co-opt, which is not expressly given by the 1947 Act, must still be derived from the 1933 Act. In the case of a sub-committee of the planning committee (to which the committee may delegate their delegated functions), a majority of the members must be members " either of the local planning authority or of the councils of county districts comprised in the area of that authority ". Such a sub-committee may therefore consist exclusively of county district council members of the county planning committee.

7. By virtue of these provisions, the number of planning authorities is reduced by the Act from 83 county boroughs and 1,356 county districts to 83 county boroughs and 61 counties, with further possible reductions in the constitution of joint boards, and an eventual possible reduction to 67, if the Local Government Boundary Commission's proposals contained in their 1947 Report are implemented.

8. The functions of the local planning authority under the 1947 Act fall into two main divisions:

(a) the preparation, modification and revision of the development plan, for which, subject to Ministerial control, the local planning authority will be invariably and exclusively responsible. This will be the subject of the third of the articles in the present series.

(b) The control and enforcement of development—in general, in accordance with the development plan. This function may, however, be delegated either wholly or in part to county districts (in the case of a county planning authority), or to the constituent counties and county boroughs (in the case of a joint board), and certain important powers under this heading are expressly given to these lesser authorities by the Act itself. The Local Government Boundary Commission seems to recommend (1947 Report, para. 43 (4)) that these functions should in all cases be entrusted to the (63) " new county boroughs " as of right.

9. This power of delegation, under schemes which require the approval of the Minister, exists by virtue of s. 34, and by this means the district councils will retain a share in the planning of their respective areas; the extent of this share will, however, vary greatly from county to county.

10. District councils will also acquire an indirect interest in the planning of their respective areas by the operation of the principle of co-option of their representatives to the planning committee and its sub-committees, which latter will in most counties be appointed on an area basis. The powers of these area sub-committees are in many counties being determined by the terms of the scheme for delegation to the county districts, although in this particular respect the approval of the Minister of the proposals of the county planing authority is not necessary.

The District Councils

11. At the present time, local government in England and Wales is administered in the great majority of areas by the " two-tier " system, whereby some local government functions are entrusted to the county councils and others are the concern of the county district councils (at the present time, the rural districts forgo some functions in favour of a third tier, the parish meetings and parish councils). For present purposes the differences in powers between non-county boroughs, urban districts and rural districts, differences which the Local Government Boundary Commission has recommended should be abolished, may be ignored.

12. Under the 1947 Act, district councils will no longer be planning, or interim development authorities, but they will have power to do the following in their own right:

(a) With the approval of the Minister, compulsorily acquire land designated as being subject to compulsory purchase for any of their functions in the development plan: s. 37.

(b) Compulsorily acquire land designated as subject to compulsory purchase in the development plan, for development, subject to the authority of the Minister, who may only approve if he is "satisfied" in certain respects : s. 38. This is perhaps one of the most important provisions in the Act, and it is interesting that this should be expressly entrusted to the county district councils, who will thus have to bear the odium of what may frequently be unpopular action. This section ensures, provided it be fully used, that in future planning will not be confined to restrictive measures as hitherto. Under this provision county borough and county district councils will be enabled to ensure that the type of development envisaged by the development plan will actually be carried out, by acquiring land and either developing it themselves under s. 20 of the 1944 Act as amended (see s. 113 and Sched. XI to the 1947 Act), or by disposing of it conditionally or unconditionally so as to secure the "best use" of the land under s. 19, *ibid.*

(c) With the approval of the Minister, acquire by agreement for development in accordance with the development plan, any land within their area, whether designated as subject to compulsory purchase or not : s. 40.

(d) With the consent of the Minister, acquire compulsorily any building (of special architectural or historic interest) in respect of which a building preservation order is in force, and land surrounding, etc., any such building. The local authority, having acquired a building under this section, will presumably be bound by the terms of the preservation order, and will be empowered to maintain the building, etc., under the Ancient Monuments Acts, 1913 and 1931: s. 41.

(e) With the consent of the Minister, appropriate for the purposes specified in the development plan, any land held for the purpose of a "common, open space or fuel or field garden allotment", not being green belt land under the Green Belt (London and Home Counties) Act, 1938: s. 42.

(f) They will be given special opportunities to consider the proposed development plan and any proposed modification, etc., thereof, and to make representations thereon to the local planning authority and to the Minister: s. 10.

(g) With the approval of the Minister, enter into an agreement with any person interested in land for the purpose of restricting or regulating the development or use of the land: s. 25, and compare s. 34 of the 1932 Act, which has been widely used.

It should be noted that in cases (a), (d), (e) and (g) above, these powers of district councils are also possessed by county councils.

Delegated Powers

13. The preceding paragraph will not in all cases give a complete account of the planning powers enjoyed by any particular county district council, for during the passage of the Town and Country Planning Bill through Committee, the Minister was persuaded to agree to the insertion of a clause, which is now s. 34, empowering the Minister to make regulations authorising or requiring local planning authorities to delegate to the councils of county districts within their areas (or to the constituent county boroughs and counties in the case of joint boards) any of their functions under Part III of the Act (Control of Development). For the period before a development plan has been approved for a particular area, the Minister has made the Town and Country Planning (Authorisation of Delegation) Regulations, 1947 (S. R. & O., 1947, No. 2499), empowering a county planning authority or a joint board, with the consent of the Minister, to enter into a delegation agreement with any or all of the district councils or constituent authorities in its area, including provisions:

(a) for the transfer of liability to pay compensation under Part III or Part VIII of the Act in respect of the exercise of such functions. [Note.—The authority for including in the Regulations compensation under Part VIII is to be found in s. 79 (4)];

(b) for the transfer and compensation of officers of the planning authority or the district councils.

14. Under these Regulations, there is no compulsion on county planning authorities to exercise these powers of delegation, and in Circular 37 (dated November 21, 1947), while favouring the principle of delegation, the Minister expressed the view that outright delegation, prior to the coming into operation of the development plan, would not be appropriate.

Nevertheless, under pressure where necessary from the three county district councils' associations, county councils generally seem to be using the machinery of the section, although the extent of delegation varies very widely. In some agreements the county districts are given more or less a free hand on all but the most important matters, and in others county districts are permitted to act only after consultation with the planning authority (which in some cases may mean an area sub-committee thereof, on which county district councils are themselves represented). In one scheme we have seen, full power to act is delegated, subject to compliance by the district councils with "directions given by the county council". In so far as this restriction refers to directions given subsequent to the coming into force of the delegation agreement and not by virtue of any reservation therein, this seems open to question. As was pointed out in another context by Scott, L.J., in *Blackpool Corporation* v. *Locker*, [1948] K. B. 349; [1948] L. J. R. 847, one who delegates a power (as distinct from the creation of the relationship of agency) has subsequently only such control over the actions of the delegate as may have been reserved at the time the delegation was made.

15. It is now proposed to consider the topics most frequently dealt with in these delegation agreements, and the extent to which delegation may be expected in respect of the more important functions of Part III. The importance of this subject was recently emphasised at the Scarborough conference of the Institution of Municipal Engineers, and especially in the paper read by the City Engineer of Manchester. This speaker expressed the hope that there would be "no marked separation of the Planner and the Technicians who will actually translate the development plans into buildings, roads and essential services", and delegation agreements under s. 34 were quoted as one of the most effective methods by which such separation could be avoided.

16. The initiating machinery, by which the process of obtaining the necessary permissions to carry out development under the Act is carried out, will be the same in all cases. Under the Town and Country Planning (Making of Applications) Regulations, 1948 (SI 1948, No. 711), *ante*, p. 82, all applications for permission to develop and for the determination of the development charge, must be submitted to the relevant county borough or county district council; this statutory requirement now replaces the request of the Minister, expressed in Circular No. 37 (November 21, 1947), to county

planning authorities and joint boards to include a provision to this effect in their delegation agreements. In most cases the district council is to be allowed, under the delegation agreement, to consider and finally determine all applications other than those of "major" importance (a question normally to be determined by the County Planning Officer), provided they have first received, and agree with, the recommendations of the County Planning Officer. In many cases, any disagreement with such recommendations means an automatic withdrawal of the application from the province of the district council, and a reference thereof to the planning committee or area sub-committee of the planning authority.

17. Applications to determine whether planning permission is required under s. 17 of the Act should normally be made direct to the local planning authority in the first instance, as such applications are not covered by the Making of Applications Regulations, and power to determine such applications is not normally delegated to the district councils under the delegation agreement.

18. The service of notices enforcing planning control and the conduct of proceedings arising therefrom under ss. 23 and 24, is generally delegated to district councils, but it is usually provided that such powers may be exercised only in consultation with or on the instructions of the planning authority.

19. The power to make tree preservation orders under s. 28 is sometimes delegated to the district councils, as is the power to make building preservation orders under s. 29, although in the latter case this power is more frequently reserved to the planning authority itself. The delegation of powers under ss. 31 and 32 (the control of advertisements) is proving a more controversial matter in some parts of the country. On the one hand, those districts where bye-laws under the Advertisements Regulations Acts, 1907 and 1925, were in force, wished to continue or strengthen their powers, but on the other hand it was argued on behalf of the county councils that the district councils tend to be parochially minded on a matter such as this where the commercial and planning interests of their towns may conflict. The outcome seems in general to be against delegation, with some exceptions. The control of waste land under s. 33, a novel but useful power, has also, in general, been reserved by the counties.

20. Most delegation agreements provide for the expenses of the district councils in the exercise of their delegated functions to be borne by the respective county districts as a charge

against their general rate funds, although it is also sometimes provided that the county council shall pay the cost of conducting proceedings on appeal to the Minister or to the law courts. The payment of compensation for refusal of permission to develop is expressly included in the Delegation Regulations as a power which may be delegated, but in practice it is normally to be a county responsibility, except where the occasion for the payment of the compensation arose from a decision of the particular county district.

21. Under the Delegation Regulations (*supra*) it is provided that it shall be a term of every delegation agreement " that any document by which any functions delegated under these regulations are exercised shall state that such functions are exercised on behalf of the local planning authority, but no such document shall be invalid by reason only that the requirements of the regulations have not been complied with ".

CENTRAL LAND BOARD FORMS

S. 1. Claim Form in respect of loss of development value.

S. 1A. Explanatory Pamphlet.

D. 1. Form of application for determination of development charge.

D. 1A. Explanatory Pamphlet.

These are obtainable at the offices of county, borough, urban and rural district councils and at the Regional Offices of the Board. In London they are obtainable at the County Hall or, in the City of London, at the Town Clerk's Office, 56–61 Moorgate, London, E.C.2.

Private Rights and Ministerial Action

By T. A. Blanco White, Barrister-at-Law

I. General Principles on which the Courts Intervene (*ante,* p. 32).
II. Objections to Planning (*ante*, p. 86).
III. Development of One's Own Land (*ante*, p. 173).
IV. **Opposition to Compulsory Purchase.**
V. Disputes about Compensation.

IV. Opposition to Compulsory Purchase

1. In the past, compulsory purchase orders of one sort or another have given rise to a good deal of litigation. It is clear, both from the text of recent Acts and from Ministry pronouncements, that an attempt has been made recently to avoid as far as possible any danger of litigation on this topic, which means in practice so drafting all legislation giving compulsory purchase powers that a landowner has no ground of objection in law whatever happens. The purpose of the present article is to discuss the extent to which this attempt to avoid litigation has succeeded.

It should be noted that a formal right of some sort to apply to the Courts for the quashing of compulsory purchase orders is always given. The question is: Can circumstances ever arise in which this right could be effectively exercised?

2. The subject falls naturally into two parts. The formal right of challenge given to aggrieved landowners always offers two grounds for application to the Court: first, that there is no power to make such a compulsory purchase order at all, and, secondly, that some procedural requirement has not been complied with. (See, for instance, the Acquisition of Land (Authorisation Procedure) Act, 1946, Sched. I (IV), para. 15 (1).) The difference is, of course an important one. If an order is quashed on procedural grounds, the purchasing authority need only start again to make a similar order, taking care not to repeat its mistake. If an order is quashed on the ground that it is beyond the purchasing authority's powers, that authority must abandon the attempt—or else find, or

acquire, some other purchasing powers. It will therefore be convenient to deal separately with these two types of objection.

3. So far as compulsory purchase powers are concerned, the attempt to remove them from judicial control has been largely successful. The method adopted is to word limitations on these powers so that they depend entirely on the discretion of the Minister concerned. Thus by s. 38 (2) of the Town and Country Planning Act, 1947, in the period before a development plan is made, the Minister can authorise the compulsory purchase of land if he "is satisfied that the acquisition . . . is expedient . . . for any purpose which appears to him to be immediately necessary in the interests of the proper planning" of an area. If the Minister of Town and Country Planning is prepared to assert that he cannot plan properly without a purpose,[1] and that having decided upon his purpose he feels that certain land is wanted too, his assertion cannot be challenged. This is a matter of departmental policy, over which the Courts have no control.

Few legislative provisions are as aggressively vague as this s. 38 (2), but the same insistence on ministerial discretion runs through nearly all recent compulsory purchase powers. See, for instance, on the Town and Country Planning Act, 1944, the valuable case of *Robinson* v. *Minister of Town and Country Planning*, [1947] K. B. 702, discussed on p. 33, *ante*.

4. It would nevertheless be wrong to suppose that there is no scope for judicial control of compulsory purchase. Under s. 38 (2) of the 1947 Act itself, for instance, the Minister would in practice presumably say what the immediately necessary purpose concerned was; this would enable the Courts to decide whether there was any other enactment under which any local authority could compulsorily purchase that land for that purpose. If there is such an enactment, the Minister has no power to exercise his general discretion as to proper planning (s. 38 (2) (*a*), words in brackets). After a development plan has been made, the main powers of compulsory purchase given by the 1947 Act depend simply on whether or not the land concerned has been designated in the plan as "subject to compulsory acquisition by" whatever public authority wants to do the buying. This also is a question of which the Courts

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[1] Apparently it is the purpose, not the acquisition of the land, that is to be immediately necessary for proper planning; this is possibly not what the draftsman meant to say. It is a pity that convention seems to prevent the use in statutes of some simple equivalent phrase such as "the Minister may if he likes".

could take cognisance, in the rather unlikely event of a dispute. The other widespread compulsory purchase power given by the 1947 Act, the power of the Central Land Board under s. 43 (2) to buy land to be resold for development, probably only comes into effect when development permission for that land has been granted : s. 43 (1). The existence of such permission also is a point a Court could decide upon.[2]

5. It has been noted before in these articles, as a characteristic of the 1947 Act, that it usually provides some way in which a determined local authority with Ministry backing can do what it wants to do. Compulsory purchase powers form no exception. Before the development plan comes into force, there is ultimately power to authorise the purchase of any land, by some local authority : either there is power under s. 38 (2) or there is power under some other enactment. Nor is there any apparent reason why all compulsory purchase orders should not as a matter of course contain a clause invoking s. 38 (2) in case the powers primarily relied upon should prove inadequate.[3] In the same way, after the plan comes into force, land which is not designated as " subject to compulsory acquisition " can be purchased be means of an *ad hoc* amendment of the plan. It does not follow, however, that the various statutory limitations on powers will never prove useful to landowners; for it does not follow that the public authority concerned is as determined as all that, nor that the Ministry are prepared to assist them. The amount of assistance likely to be forthcoming from the appropriate Ministries, will, after all, depend on the view taken by those Ministries of the merits of the case.

An extreme example may serve to illustrate this last point. Under s. 114 (5) of the 1947 Act, any land, " designated " or not, within a metropolitan borough, can be compulsorily purchased by the borough council if the Minister of Health is satisfied that the purchase is expedient in the public interest " for the purpose of providing a public open space ". If the borough council used the land so acquired for some other purpose, the Courts could not intervene. It seems likely, however, that the Ministry of Health would do any intervening necessary.

6. In one exceptional case, the 1947 Act gives an appeal

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[2] It is, however, arguable that the words in sub-s. (1) as to permission having been granted are mere surplusage.

[3] Unless " speedy acquisition " procedure is to be adopted (see para. 10, below): this is not available under s. 38 (2).

to the Court on the merits of a compulsory purchase order. Under s. 29, a local planning authority can, if it likes and the Minister agrees, make a " building preservation order " in respect of any " building of special architectural or historical interest " in its area. Under s. 41, where such an order is in force the Authority may, if the Minister likes, be authorised to purchase the building compulsorily. But the local court of summary jurisdiction can stay the compulsory purchase order if satisfied that reasonable steps are being taken for proper preservation of the building; there is an appeal to quarter sessions. What is more, it is apparently open to the High Court to quash a building preservation order on the ground that the building concerned is not of special interest.[4] It has been noted before that the Act treats aesthetic questions like these quite differently from questions involving departmental policy.

7. Where procedure for compulsory purchase is concerned, the position is rather different. The effect of the 1946 Acquisition of Land Act, and of its application in the 1947 Act, is to apply to almost all compulsory purchase orders a single standardised procedure as provided in Sched. I of the 1946 Act. This standardised procedure corresponds roughly with that of the Local Government Act, 1933; the only important case excepted from it seems to be that of slum clearance under Part III of the Housing Act, 1936.

The procedural requirements of the 1946 Act are definite—there is little scope for administrative discretion in relation to them; but no doubt they are or soon will be sufficiently familiar to Ministries and to most local authorities for mistakes in their application to be rare. They are also likely to become sufficiently familiar to the legal profession for mistakes in their application to be easily noticed. Apart from an occasional leading case, therefore, they are unlikely to give rise to much litigation.

8. In the special provisions protecting local authorities, statutory undertakers, open spaces and the National Trust, ministerial discretion turns up again. Before land belonging to local authorities, land acquired by statutory undertakers for the purposes of their undertaking, or inalienable land of the National Trust can be compulsorily acquired, the owner concerned can at some stage have the matter submitted to

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[4] Under s. 30 the Minister is to compile lists of such buildings, and listing of a building subjects the owner to certain formalities; but listing under s. 30 does not appear to affect the position under s. 29.

special parliamentary procedure—either when that land is "designated" by the development plan as subject to compulsory acquisition, or if it is not designated when the compulsory purchase order is made. (See ss. 5 (4) and 45 (3) of the 1947 Act, and Sched. I, Part II, para. 9 of the 1946 Act.) There may be a tendency on the part of local authorities or Ministries to avoid giving full effect to these provisions; if so, the matter can be taken to the Court on an application to quash the plan or the compulsory purchase order as the case may be. Apart, however, from this matter of special parliamentary procedure, the protection given to these types of land amounts to the familiar proposition, that the Minister concerned can if he likes, but must think it over first.

9. Where land is "designated" by the development plan, the Minister concerned may ignore any objection to compulsory purchase of that land which he thinks ought to have been raised when the plan was in draft: 1947 Act, s. 45 (1). This provision gives Ministries very wide discretion indeed; but clearly, the point must be considered by the Minister when the objection is made—or strictly, when he decides to ignore it—or the subsection does not apply. A Ministry cannot simply ignore an objection and then later on, when an objector takes the matter to the Court, decide that the objection could after all have been ignored under s. 45 (1). In practice, however, it may well be difficult to prove that a decision to apply s. 45 (1) was not taken at the proper time, if the Ministry says it was. Unsuccessful attempts to prove this may well in due course rival our old friend "natural justice"[5]; as a basis for applying landowners' money to the benefit of the legal profession.

10. Accelerated compulsory purchase procedures provide some scope for judicial control; this applies both to the temporary powers of speedy acquisition given by s. 2 of the 1946 Act, and to the "expedited completion" derived from Sched. VI of the Town and Country Planning Act, 1944. Decisions whether to apply these procedures in any particular case are, of course, purely discretionary: the requirement that the purchase be "urgently necessary in the public interest" reduces as usual to the proposition that the Minister concerned can call it urgent if he likes. Each procedure, however, is only applicable in limited circumstances: the "speedy acquisition" procedure is inapplicable to dwelling-houses or to land of the

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[5] P. 35, *ante*, para. 8.

types mentioned in para. 8 above, and the "expedited completion" procedure can be blocked if an attempt is made to apply it to a partial purchase of buildings or grounds. (See respectively 1946 Act, Sched. III, para. 1; and 1944 Act, Sched. VI, para. 4, as printed in Sched. XI of the 1947 Act.) All these limitations can be the subject of judicial control. Further, each procedure is only available for use with certain compulsory purchase powers: "speedy acquisition" especially is not available under the widest powers of the 1947 Act (ss. 38, 43, 114 (5)).

It may be noted that the effect of exceeding powers to use accelerated procedure is different in the two cases. If "expedited completion" is wrongly included in an order, or is blocked, the order takes effect without it. If an attempt is made, *ultra vires*, to apply "speedy acquisition" procedure, the authorisation of compulsory purchase is void, and the purchase must be started again: this procedure is alternative to the normal procedure, not supplementary to it as "expedited completion" is. For the same reason, the provision for application to the Court to quash a compulsory purchase order appears not to apply to authorisations for "speedy acquisition"; the remedy of a landowner aggrieved by such an authorisation is presumably to apply for certiorari or prohibition.

SUMMARY

11. The position may be summarised as follows:

(1) There is still some scope for judicial control of compulsory purchase.

(2) Nevertheless, there is always some method by which any piece of land can be compulsorily purchased, if the appropriate Ministry likes.

(3) Normal compulsory purchase procedure is unlikely to give rise to many legal disputes, except possibly as to the power to "ignore" certain objections to the purchase of "designated" land.

(4) There is scope for judicial control of accelerated compulsory purchase procedures.

Valuation and Management

By W. A. LEACH, F.R.I.C.S.

I. Development Rights of Owners (*ante*, p. 38).

II. Effect of Planning on Property Management (*ante*, p. 92).

III. **Development Value—Development Charges—Effect on Property Values.**

IV. Compensation for Planning Action other than Development.

V. Valuation for Compulsory Acquisition.

VI. Valuation for Injurious Affection.

III. Development Value: Development Charges: Effect on Property Values

(*Continued from p.* 181, *ante*)

B. DEVELOPMENT CHARGES

Cases in which Development Charges Payable

12. In Article I of this series, *ante*, p. 38, development was classified in four groups:

A. What may be done without charge or permission under s. 12.

B. What may be done without charge but with permission under Sched. III (with compensation rights if permission refused or granted conditionally) and Regulations under s. 69 (2) (*b*) (see now the Development Charge Exemption Regulations, *ante*, p. 236).

C. What may be done without specific permission but subject to charge by virtue of development orders under s. 13 (see now the General Development Order, *ante*, p. 149).

D. Developments affected by earlier planning control yielding three cases in which no charge is payable: (a) completion of the erection or alteration of a building under s. 78, (b) development of land certified as ripe under s. 80, and (c) developments contravening previous planning control but validated under s. 75, or the Building Restrictions (War-Time Contraventions) Act, 1946.

In all cases not falling within A, B, or the three special cases mentioned in D, a development charge will be payable in respect of any new development, even if any permission under previous legislation is carried forward under the new Act or fresh permission granted for the same development.

13. *No development attracting development charge may be undertaken until the charge has been paid to the Central Land Board, or the amount payable has been certified by them as secured to their satisfaction* (s. 69). There are penalties for disregard of this rule (see s. 74, *post*).

14. A development within Sched. III will be subject to charge if a previous application for the same development was refused or granted subject to conditions, and compensation in respect of that determination has been paid under s. 20 (s. 69 (3)).

On similar grounds, if compensation has been paid for the discontinuance of a conforming use or the removal of conforming buildings (s. 27), a charge will be payable if the resumption of that use, or the rebuilding of those buildings, is permitted (s. 69 (3)).

Where a limited period permission for buildings or works has been granted and this is extended under s. 18, a fresh development charge will be payable (s. 69 (4)). The permission to retain the buildings and other works is to be deemed to be one to carry out building or other operations; as regards the use, the permission authorises a change of use from that carried on on the appointed day, and the liability to charge arises automatically.

15. Any person having a sufficient interest in the land to enable him to carry out the proposed development may apply to the Board to determine *whether*, and if so, *what* development charge will be payable (s. 70 (1)). Applications are to be made in accordance with reg. 3 of the Town and Country Planning (Making of Applications) Regulations, 1948 (see *ante*, p. 83). The Board may, however, defer their determination of the *amount* until planning permission has been granted, or until they are satisfied that the applicant will be able to carry out the development within a reasonable time. If no charge is payable the Board may be required to give a certificate to that effect (s. 71 (3).

Basis of Development Charge

16. By s. 70 (2) the amount of the charge is to be arrived at with regard to the excess of the value of the land with the benefit of the planning permission (assuming it to be free of charge) over its value without that permission, *i.e.*, as restricted by the Act (see para. 18, *infra*). Note that the

reference is to the value of the land (not the value of the interest of the applicant) and that, under s. 119 (1), it is only in relation to compulsory acquisition that " land " includes any interest therein; also it is to be inferred from s. 72 (1) that the determination stands indefinitely for the operation carried out or the use instituted unless (as regards a use only) in respect of a limited period under s. 72 (2). Compare also s. 61 (1).

It may be deduced from these considerations that the development charge must be calculated without regard to interests, *i.e.*, by reference to the benefit to the freehold with vacant possession. In the case of a limited period permission (see para. 20, *post*) there may be a temporary benefit to the freehold with vacant possession; the relation of the charge to the freehold does not mean that the benefit must be considered as perpetual.

It may be noted that " value " is not defined, and as the charge may be levied as a capital or annual payment, presumably the additional annual value attributable to the permission could be adopted in suitable cases.

17. By definition " land " includes buildings, and where the land is built upon, the value of the development permission will require to be assessed in relation to the improved value of land and buildings so far as the latter are to be retained in the development. The " life " of the buildings and cost of the works will be material in estimating the improved value.

Since it is the freehold which has to be considered, restrictions under leases will not be relevant, and regard can only be had to restrictions and easements binding on the freehold as in hand. Any conditions attached to the planning permission and the requirements of the bye-law authorities (including requirements as to lay-byes, etc., under s. 17 of the Restriction of Ribbon Development Act, 1935), will be material. Regard must also be had to adjacent development and proposals for redevelopment. For this reason the " restricted value " as estimated under Part VI of the Act may not be evidence of " value without permission " (see para. 5 (2), p. 183, *ante*).

18. When estimating the value of the land without the planning permission regard must be had to the tolerances under Sched. III, for it is only permissible in excess of those rights which is chargeable. Thus, where the alterations are partly internal and partly external the development charge can only be related to the latter, for the former have been excluded from compensation under Part VI. If and in so far as the internal

alterations would be purposeless without the external work, the whole operation is dependent on the planning permission for the external work, and the whole increase in value will be attributable to the permission. Similarly where a house is converted into flats and enlargement beyond 10 per cent. of the existing cubic content (or 1,750 cubic feet) is involved: in the first place consideration must be given to the possibility of a conversion not involving an enlargement beyond the free limit (or the letting of the house in parts without conversion) which would be approved under bye-law and planning control, as, if practicable, this would then be the basis of the restricted value. If not practicable, the whole additional value due to the conversion flows from the permission for the excess cubic content, for without that permission there would be no conversion and no additional value.

Sched. III offers numerous difficulties in interpretation, and it may be a long time before it is reduced to certainty.

It may here be noted that freedom from development charge in respect of the use of a dwelling-house as two or more dwelling-houses (para. 2 of Sched. III) is given only to a building used as a single dwelling-house on July 1, 1948. A house used as two or more dwellings on that date cannot be used for a greater number without attracting liability to development charge (if the change of use is a "material change"): a house not used on July 1, 1948 (unless last used as two or more dwellings) cannot freely be used as more than a single dwelling; neither can a house not completed on July 1, 1948, unless erected under a planning permission for use as more than one dwelling.

18a. Where a new building is to be erected, the value without permission will be either the value of the land and buildings with the rights under Sched. III to enlarge or alter, or, if the existing buildings are considered useless, the value of the property for redevelopment as allowed by Sched. III.

These "with" and "without" values may not always be readily assessable. In the case of a cleared site neither the development for which permission has been granted nor the Sched. III development may coincide even approximately with the building coverage on, and the use of, neighbouring land of which details of price are available, and it may be necessary to construct a complete financial statement of capital outlay and estimated rentals and outgoings in order to arrive at the value of the land under each form of development.

In this statement allowance should be made for writing off the building cost in, at most, ninety-nine years, as a building will probably only last longer if substantial expenditure is incurred on modernisation. It is also possible that at some future date there may be a "life" after which removal can be required without compensation, and this might in fact be possible under s. 26 as it stands.

Allowance must also be made for the fact that the charge is in respect of the building operations (not for the right to retain the buildings) and on every rebuilding which is not a substitution of buildings as mentioned in para. 1 of Sched. III (see Article I, para. 5 (1), *ante*, p. 41), a fresh development charge will be assessable on the planning permission for the new building operations. Provision must, therefore, be made for writing off the charge during the estimated life of the buildings in the same way as when valuing a leasehold interest, *i.e.*, by capitalising at dual rates with an allowance for tax on sinking fund. For example :—

Rental Value of land as unrestricted	£1,000 p.a.
Rental Value of land as restricted	300 p.a.
Value of planning permission	700 p.a.
Y.P. 99 years at 5 per cent. and 2½ per cent. allowing tax at 7s. 6d. in £ on A.S.F.	18.5
Value for Development Charge	£12,950

18b. Allowance must also be made for any depreciation which will result from the operations (*e.g.*, excavations as in mining operations) and the cost of any essential reinstatement (see example in para. 20, *post*).

18c. The Development Charge Exemptions Regulations made under s. 69 (2) (*b*) (*ante*, p. 236), allow certain developments to be carried out without payment of development charge, including the rebuilding of buildings for which development charge has been paid, but the following points should be noted :—

(a) the regulations are subject to variation;
(b) the rights given by the regulations cannot be taken into account in assessing compensation for compulsory acquisition, and
(c) there is no right to compensation if planning permission to rebuild a building subject to the regulations is refused under Part III of the Act.

The development charge for a building erected otherwise than in accordance with para. 1 of Sched. III must, therefore, have regard to the possible refusal of planning permission to rebuild, and the writing off of the charge should be allowed for in the valuation.

19. In the case of a use, this may go on in perpetuity, but prevision should be exercised to avoid paying too dearly for what may be a non-permanent asset. Where the permission is for a limited period allowance must be made for the charge to be written off within that period, and for any depreciation in the land or cost of reinstatement or other works that may arise from the use, *e.g.*, it may be necessary to soil and seed over a rubbish tip in a gravel pit.

20. Where a permission is obtained for building operations combined with change of use for a limited period the position may become involved. Presumably the building must be valued as altered and available for the new use for the period of permission for that use, with a reversion after that period to the building as altered but not available for that use. If the building as altered will require to be wholly or partially reinstated before the former use can be resumed that will properly be taken into account. The following valuation will indicate how the various factors may be allowed for (the figures and percentages have no significance and have been employed simply to illustrate the method) :—

Assume a limited period permission is granted for a dwelling-house to be used as a workshop—

Rental Value of dwelling-house	£40 p.a.
Cost of adapting as workshop	£500
Rental Value as workshop	£200 p.a.
Period of permission	15 years.
Cost to reinstate as dwelling-house	£200
Rental Value as reinstated dwelling-house ...	£50 p.a.

The alterations and change of use produce a profit of £160 p.a. for 15 years, after which there will be a profit rent of £10 p.a. in perpetuity.

Example.

Profit Rents

(a) For first 15 years	£160 p.a.	
Y.P. for 15 years and 6 per cent. and 2½ per cent. with tax on A.S.F.	6.4	£1,024
	£10 p.a.	
(b) After first 15 years—		
Y.P. in perp. deferred 15 years at 6½ per cent.	6	£60
carried forward		£1,084

brought forward		£1,084
Deduct—		
1. Cost of alterations	£500	
2. Cost of reinstatement, £200 defd. 15 years at 2½ per cent. (Sinking Fund Rate)	£138	
		£638
Value for development charge		£446

21. Regulations prescribing general principles to be followed in the determination of charges have been made under s. 70 (3). See the Development Charge Regulations, *ante*, p. 241, and the discussion thereof in Parliament, *ante*, p. 245.

22. The Board is required by s. 70 (2) to act equably. They cannot quote £x to Mr. A whom they may not like, and, when he has gone, quote £y to Mr. B. Presumably, this can be interpreted more widely, and equable treatment must be meted out, so far as valuation is concerned, as between one piece of land and another, subject to the Treasury regulations. This requirement as to charges being equable is important, in that it precludes an owner-occupied property being valued at its value to the owner, and, in effect, introduces the rule of market value (rule 2 of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919), but special suitability of the land for a purpose (rule 3) would not be excluded.

Form of Development Charge

23. The charge may be made payable as a single capital sum, a series of capital instalments, or capital instalments with interest, or a series of other annual or periodical payments (s. 71 (1)).

Security for Charge

24. Except where a single capital payment is made the Board may require the applicant to enter into covenants for payment (including interest on arrears) and to give such security as they direct whether by way of charge on the applicant's interest or otherwise. Any outstanding liability may be discharged at any time on such payment as the Board may determine as representing the value thereof (s. 71 (2)). On discharge of the liability the applicant may require a certificate to that effect (s. 71 (3)). The Chairman of the Board has stated that the Board propose as a rule to charge a capital sum and that where not paid as a single payment security other than the land itself will generally be looked for. The Board do not

wish large areas of land to become encumbered for years as a result of their operations.

Any sum determined by the Board as a capital sum ranks as capital under the Settled Land Act, 1925, and the Universities and College Estates Act, 1925 (s. 71 (4)).

Permanence of Determination

25. A development charge is payable for the right to do something at a particular point of time, *i.e.*, to carry out operations or to institute a use, although the amount of the charge, being based on the benefit of that right, must necessarily have regard to period during which that benefit is likely to be derived. With two exceptions, the determination once made enures for the benefit of any person from time to time having an interest in the land.

The first exception is that in the case of a use, the determination may be restricted to the value of the benefit during a limited period, in which event it will enure for the benefit of persons interested in the land during that period. At the end of the period the position will be as though no determination had been made (s. 72).

The second exception is designed to avoid speculation in development charges. If, after the amount of a charge has been determined, the interest of the applicant is transferred, or a new interest created before the operations have been carried out, or the new use instituted, the Board may direct that the determination shall cease to have effect unless confirmed, with or without modifications, on a new application (s. 72 (1) (proviso)). No purchase should, therefore, be negotiated on the footing that a determination for a contemplated development is final.

Variation of Development Charges

26. Any person interested in the land may apply to the Board to vary their determination in the light of changed circumstances, including the permitted development of adjacent land otherwise than in accordance with the development plan. The Board may amend, discharge, or release any covenants or charges given or made, and repay any sums previously paid under the original determination. They may not, however, increase the charge (s. 73).

27. Where a planning permission is revoked under s. 21, or the removal of buildings or discontinuance of a use is required under s. 26, or the whole of the land subject to the charge is

compulsorily acquired, the determination and any covenants or charge given or made in respect thereof will cease to have effect. There will be no refund in these cases as compensation would be claimable under s. 22 or s. 27, whilst in a compulsory acquisition the land could be acquired with due regard to what had been paid and what was outstanding, and the Board will pay to the acquiring authority such amount of the development charge received by them as may be agreed (s. 73).

28. When planning permission is modified under s. 21, or the alteration of buildings or works is required under s. 26, or conditions are imposed on the continuance of a use under the latter section, or part of the land is compulsorily acquired, the Board must, on proper application being made, vary their determination, any variation being taken into account in assessing compensation under s. 22 and s. 27.

Operations Carried Out and Uses Established in Advance of Determination

29. Where a development assessable to development charge is carried out after July 1, 1948, before the Board have made their determination, they may at once order the determination of the charge. The amount of charge may not be increased because of the irregularity, but under s. 73 (4) a penalty of up to double the charge may be imposed subject to a right of appeal to the courts.

If an enforcement notice is served under s. 23 in respect of the development also being without planning permission, the charge is to be estimated with due regard to what happens in those proceedings.

The order of the Board may direct payment of the charge and penalty together with interest by any person by whom the development was carried out, and may charge the interest in the land of any person with the sums payable by him or any of his predecessors in title (s. 74 (2)). Such a charge is to be deemed to be a land charge of Class A under the Land Charges Act, 1925, and the Board is given the same powers and remedies as a mortgagee by deed with powers of sale and lease, and of appointing a receiver (s. 74 (5)).

C. EFFECT ON PROPERTY VALUES

30. It is too early yet to express definite opinions for so far the implications of the Act do not appear to have sunk very deeply into the property market.

The view seems to be widely held professionally that land which has already been developed to its best advantage will have a tendency to rise in value. That is, perhaps, to some extent a natural anticipation, but if the rise occurs then the tendency will be for development values to follow, starting another of those vicious and much to be deplored spirals. Whether a rise will, in fact, occur depends, however, on many considerations including the following:

(a) ease or otherwise of securing planning permission:
(b) level of development charges;
(c) demand and supply in locality for particular types of property for occupation or investment;
(d) existing level of values.

It remains to be seen how (a) and (b) will work out. As regards (c) a person requiring accommodation for his own use may be willing to pay more for something which is, as it were, ready made, thereby saving himself the troubles, uncertainties and delays of trying to settle himself somewhere else. The investor, however, will only be satisfied with the reduction in the rate of yield which would result from a higher purchase price if official action under (a) and (b) led to a restriction of supply of a particular type of property and hence to higher rents and greater security of income. The existing level of values will operate to prevent increases in price where, owing to shortages, those values are already beyond any sanction other than the law of supply and demand.

31. We have already mentioned in Article II, para. 5, p. 94, *ante*, that the purchaser should always buy at existing use value and leave the unpredictable compensation under Part VI to the purchaser, but we may now add that, whatever one's views may be as to the possible level of development charges, the assumption must always be, in the absence of concrete evidence to the contrary, that 100 per cent. of any increase in value resulting from planning permission will be taken by the Central Land Board. The Development Charge Regulations, p. 245, *ante*, leave no doubt as to this. It would also be wise until the new development plans have been made and approved to assume that no planning permission will be granted until it has in fact been granted.

In short, the man who is buying for his own use must make the best bargain he can; bearing in mind the risks, the speculator can weigh up the chances as he pleases and make his gamble; but the investor should set up his standards of caution and keep within them.

Dealings with Land under the Planning Acts

By HAROLD POTTER, LL.D., Barrister-at-Law

I. Inquiries Preliminary to Contract (*ante*, p. 48).
II. Contract for Sale (*ante*, p. 104).
III. Requisitions on Title (*ante*, p. 188).
IV. **Conveyances on Sale.**
V. Provisions in Settlements and Wills.
VI. Provisions in Leases and Mortgages.

Conveyances on Sale

1. The problem of drafting a conveyance to the best advantage under the new law is essentially complicated, because the Town and Country Planning Act, 1947 (hereinafter called the Act) does not approach this angle of the subject. Unless the new Development Plans, when available, are detailed in a measure not hitherto contemplated there is no provision for evidence of the state of affairs at any given time. Nevertheless, this is of vital importance to owners of land for two reasons: (i) the service of an enforcement notice for alleged contravention (ss. 23, 24), and (ii) claims for compensation arising out of discontinuance orders affecting a valid use: ss. 26, 27. In one sense the evidential value, if any, of the conveyance in respect of the first is of less importance than the second. An enforcement notice must, apparently, be served within four years " of such development being carried out ": s. 23 (1). It would *seem* that an illegal development becomes lawful user at the expiration of four years. Whether this constitutes a " prescriptive " right to an unlawful development is, perhaps, not so clear, but it is thought that it does. The obvious complications of this effect of the Act do not call for attention here save to emphasise the awkward problem of " evidence ".

2. We have already given our reasons (*ante*, p. 194) for thinking that the " existing use " of the property is a matter of title and in conveyancing we think that statements of title

should, so far as possible, appear on the title deeds. The precise value as a matter of title that these statements may have is more difficult and we propose to advert to the matter at more length. There is the further point, however, that proper provision will ensure that this matter is within the ambit of the covenants for title so that a purchaser will at least be entitled to claim damages if the statement proves untrue. The extent of the damages is also a matter calling for attention and may require additional protection.

There is, however, one great difference between the use as a matter of title and the more ordinary cases of title. The establishment of a " right " to a particular use is not material against persons generally. No private person can claim the use by another title. There appears to be no way, not even by information by the Attorney-General, in which this " right " can be affected *except* through the action of the planning authorities by the methods designed by the Act. Furthermore, these proceedings are analogous to criminal proceedings even if they fall technically short of this description. The enforcement notice and proceedings connected with it, including the recovery of the cost of enforcing it by proceedings in a Court of summary jurisdiction (see *R.* v. *Kerswill*, [1895] 1 Q. B. 1) do not seem to be criminal proceedings. On the other hand, continuance of user after an enforcement notice (s. 24 (3)), or after a discontinuance order (s. 26 (4)), or failure to comply with a Tree Preservation Order (s. 28 (6)) or Building Preservation Order (s. 29 (5)) are all made offences. The importance of this point depends upon the application of the Evidence Act, 1938. It is suggested that a conveyance containing particulars of use may well fall within the Evidence Act, but, in fact, it does not apply to criminal proceedings save in scarcely material particulars.

Nevertheless, we think that from the point of view of title against the Planning Authority the conveyance would normally be required to assist in proceedings connected with an enforcement notice. Although appeal lies to a petty sessions and from there to quarter sessions we do not think that the proceedings can properly be described as criminal because it depends upon the nature of the proceedings as well as the character of the tribunal: cf. *R.* v. *Tyler and International, etc., Co.*, [1891] 2 Q. B. 588. This appears to be quite definitely the case with regard to claims to compensation for discontinuance: s. 27. Although we have mentioned this matter we do not pretend to have considered exhaustively the law on the point which may become material. We have mentioned it at all only because of the peculiar situation which has arisen as no adequate provision has been made by the Act for the means of establishing the vital fact of user for the purposes of the Act.

3. It may be doubted whether it is necessary or desirable to make the conveyance expressly subject to restrictions imposed under the Act as, for example, restrictions under an agreement regulating user (s. 25); Tree Preservation Order (s. 28); Building Preservation Order: s. 29. In our opinion, however, these matters are incumbrances which must be disclosed and to which the conveyance must be expressed to be subject as they operate against the land itself: cf. *Re Bettesworth and Richer* (1888), 37 Ch. D. 535; *Stock* v. *Meakin*, [1900] 1 Ch. 683. Failure to mention them in the conveyance may have the effect of rendering the vendor liable on his covenants for title notwithstanding even that they were disclosed in the contract: see *Page* v. *M. R. Co.*, [1894] 1 Ch. 11; *Turner* v. *Moon*, [1901] 2 Ch. 825; *Fisher* v. *G. W. Ry.*, [1905] 1 Ch. 316. In order, therefore, to avoid any possibility of doubt they should be mentioned expressly in the habendum to the conveyance.

Other matters, such as abatement notices affecting the immediate condition of the land and not intended to operate merely to maintain it in its present condition, should be dealt with independently of the conveyance.

4. Assuming the correctness of the views here expressed two questions arise: first, the correct method of dealing with them in a draft conveyance; secondly, the effect of a conveyance drafted in the old form ignoring the effect of the Act, as no doubt many conveyances will be drafted. The second point cannot be dealt with in available space and must be left for another occasion. Hereafter we propose to deal briefly with the considerations that have led us to adopt the form given in the Precedent attached to this article. We may here observe that we have adopted a full form since in the absence of authority safety is probably to be found in being explicit. The effect of the Act is to introduce something like the old forms of tenure before their abolition in 1660 by the Abolition of Military Tenures Act, but the conveyancing of that age is so remote from the present that little can be learned from it. Furthermore, the tenures of that period were well settled, whereas the obligations imposed by the Act are by no means so clearly defined.

Recitals

5. At the present stage the material date for all user is the Appointed Day. As we have pointed out the time will come when that date may be irrelevant, because an enforcement notice cannot be served by reference to use at the Appointed Day. This may affect the development of conveyancing practice, but it is too early to gauge its form. On the other hand, until the Appointed Day becomes irrelevant as a date, in our opinion this matter of title should be dealt with by recital exactly as if a grant had taken place on that day whatever subsequent planning permissions or other authorised user should subsequently have resulted in change.

One of the advantages of such a recital would be that it is a statement by a person who may be presumed to have knowledge of the facts and so would be available in evidence in civil proceedings under the Evidence Act, 1938, provided, of course, that the conditions of that Act are fulfilled. As we have pointed out, one of the great weaknesses of the Act is the difficulty that any purchaser may experience, in the event of being served with an enforcement notice, in showing what the user was on the Appointed Day.

It will, of course, also operate as an estoppel in the case of the purchaser wishing to sue the vendor. But primarily its purpose must be to serve as a record of " title " and it is for this reason that we think that whatever may be incorporated in the operative part of the deed the recital should deal with the " history " of the use from the Appointed Day.

Habendum

6. Because the " use " determines the modern character of the fee simple it would seem on principle that the use should be declared as part of the grant in the habendum. Apart from the natural objection of novelty there is the further difficulty that in the event of the use being incorrectly or inadequately described it might be argued that some interest was left in the grantor. We do not think that this construction could be put upon a conveyance since it would seem to conflict with the principle of the statute of *Quia Emptores* and could not be construed as a condition, since the right of entry would be void for perpetuity. Nevertheless, it may be simpler and have a less strikingly novel appearance if the use is expressed in a separate clause. Every effort should be made

to avoid ambiguity in the habendum : cf. *May* v. *Platt*, [1900] 1 Ch. 616; *Stait* v. *Fenner*, [1912] 1 Ch. 504.

On the other hand, it is in the habendum that any incumbrances, such as Tree Preservation Orders, should appear. These operate as restrictions upon what would otherwise be lawful use of the premises. While it is not possible to put up a new greenhouse more than ten feet high, it seems that it could be pulled down. We say this subject to correction, because if the ground on which it stood had suffered a material change it is arguable that it is not possible. Nevertheless, the existence of provision for Tree Preservation Orders seems to imply the power to remove erections, though the power to make them is limited. This restriction is peculiar to particular parcels and cannot be regarded as general law. Hence we think that clearly it must constitute an incumbrance.

Declaration of Use and Covenants for Title

7. Regarded from the point of view of the purchaser a declaration in the operative part of the use or the several uses to which the land or parts of the land is or are put seems imperative. In the absence of any such declaration it would seem that the conveyance operates only to convey the land subject to the lawful use as determined by the Act. This would have apparently the opposite effect to the conveyance in *May* v. *Platt*, *supra*, because there is no definition of the rights assured under the grant. Consequently, should the land subsequently prove to be subject to uses other than those specified in the contract it would be possible only to apply for rectification : cf. *Stait* v. *Fenner*, *supra*. It is doubtful whether reliance can be placed on recitals : *see Page* v. *M. R. Co.*, *supra*, where a recital was held not to prevent recovery on the covenants for title because no mention of the incumbrance was made in the Habendum. It is also doubtful whether rectification would often be granted.

The framing of the declaration is not without difficulty when the premises include a variety of uses. It is rendered the more difficult, because the new General Development Order, SI 958/1948, does not define except by exclusion. For example, it refers to permitted development by change from one form of shop premises to another, except that of cats meat shop, etc. Similarly one form of light industrial purpose can be changed to another form of light industry without a planning permission. This is the position at the present time, but, of course, the General Development Order can be revoked or modified either as applicable to the country as a whole or to particular districts. In our view, therefore, the description should be as precise as possible; for example, by reference to a " grocer's shop and premises " rather than to " a shop and premises ". If the character of the shop is changed this becomes a matter of title referred to in an earlier paragraph. Naturally the declaration will be so framed as to include all further permitted developments for reasons mentioned in para. 6. Obviously wherever the details are complicated the description must be by reference to a Schedule.

Although as the law now stands (*Re Sharman and Meade's Contract*, [1936] Ch. 755; 105 L. J. Ch. 286), a purchaser is not entitled to a plan unless it is necessary for an adequate description, we think that the necessity of this declaration may enhance the importance of plans. It should be possible most clearly to designate complicated cases of use by reference also to plan. This plan should, in our opinion, always be the Development Plan where this exists. We have mentioned this point in connection with contract and it is not necessary to say more than that Development Plans should take the place of the Ordnance Survey Map in modern conveyancing.

8. Normally speaking, to enforce liability on the vendor after conveyance where the land cannot be used for the purpose contemplated it will be necessary to sue on the covenants for title. We are not here concerned to discuss whether without express mention the covenants for title would cover this case. The difficulty is that these covenants are normally qualified and it may be argued that the restriction on user is not imposed by anything made, occasioned or suffered by the vendor: cf. *Stock* v. *Meakin*, [1900] 1 Ch. 683. To avoid any question, therefore, it is clearly desirable that the conveyance should contain express words incorporating liability into the implied covenants for title.

The breach of the covenant for good right to convey occurs at the date of conveyance and occurs whether or not there is any interference: *Turner* v. *Moon*, [1901] 2 Ch. 825. On both these grounds, therefore, it is desirable that a breach arising from inaccurate description of use should not primarily fall within this covenant but within the covenant for freedom from incumbrances. This covenant is only broken by interference (*Nottidge* v. *Dering*, [1909] 2 Ch. at p. 656; [1910] 1 Ch. 297), and time does not begin to run under the Limitation Act until the interference occurs: Wms. V. & P. (4th ed.) p. 1081. On these two grounds the form of incorporation should refer to the covenant of freedom from incumbrances, but it has the further advantage that it also applies to the covenant for title where the vendor is expressed to convey "as trustee", etc.

9. The damage recoverable under the covenants for title is the difference in value between the land in the condition in which it was conveyed and the land in the condition in which it was purported to be : *Turner* v. *Moon*, *supra*. It does not include the costs of taking proceedings to protect the property which proved abortive : *ibid*. This decision seems of considerable importance, because no doubt expenses will normally occur wherever there is a claim by the Planning Authority that a particular use is invalid. It may, therefore, be desirable to support the covenants for title by an express covenant relating to costs and expenses, but it is thought that in a normal case this will be resisted on the ground that the purchaser is entitled to no greater protection than in the case of any other defect of title.

Express Covenant of Indemnity

10. From what has been said in the last paragraph, it will appear that an express covenant for indemnity can only reasonably be required where there is some special provision arising from the contract or in the character of the restrictions. Where, however, certain steps should have been taken by the vendor, *e.g.*, to comply with an abatement notice or even an enforcement notice, it would seem that there is good ground for a covenant for indemnity. This may also apply where no adequate description can be given of the uses to which the property is properly subject. It seems by no means improbable that trustees and personal representatives may be in a very difficult position from having no knowledge of the circumstances. Unless the provisions of the Act are to be enforced with great leniency during the early period it will present difficulty because no doubt it will take time for members of the public to realise the considerable restrictions imposed by the Act and the Statutory Instruments made thereunder.

Some practitioners may think that the covenant for indemnity alone would suffice and that clause 3 is redundant. Apart from the considerations already given we do not take this view because it gives rise to another problem, namely, whether such a covenant would run with the land in the event of a further conveyance. It is not very easy to determine whether the benefit of a covenant of this character can be said to run with the land at law since it is by no means clear that it can be said to touch and concern the land: cf. *Grant* v. *Edmondson*, [1931] 1 Ch. 1. We think that it may well be held that it would not, but, of course, the benefit of covenants for title does run with the land. In these circumstances we would advise the use of clause 3 in every case.

Registered Land

11. If the position in unregistered land is difficult the situation with regard to registered conveyancing is wholly obscure. Registered conveyancing depends, of course, primarily on prescribed forms and the Land Registry Map or filed plan. We do not see the likelihood of coincidence between the Development Plan and the Land Registry Map. Furthermore, the Registry officials do not like undue additions to prescribed forms. There is nothing in registered conveyancing which protects the purchaser from the impact of the Act. In these circumstances it is peculiarly difficult to decide what course should be adopted. Logically since the Register is silent on these matters the same provision, including recitals should be incorporated in the registered transfer. The adoption of such a course would not be popular with the Registry since it would mean the virtual abandonment of the present short form of transfer. Nevertheless, all the arguments appropriate to unregistered conveyancing apply equally to registered land. To deal with the matter by separate instrument would make the whole machinery of registered conveyancing too complicated. No doubt most conveyancers will compromise by incorporating clauses 2 and 3, and clause 4 where appropriate, from the precedent attached to this article into the body of the prescribed form. This appears to be the irreducible minimum unless and until some provision is made for dealing with the registered title to a use.

It should be pointed out also that no provision is made for the restrictions either general or particular such as under the Tree Preservation Order, being either (i) overriding interests or (ii) registrable in the Charges Register. It is presumed that it is not contemplated that such restrictions should be entered on the Register. It may, therefore, also seem right to require mention in the transfer of such incumbrance on the same principle as unregistered conveyancing.

Form of Conveyance of Freeholds

By Harold Potter, LL.D., Barrister-at-Law

This conveyance made the day of 1948 Between A. B. of etc. (hereinafter called the Vendor) of the one part and C. D. of etc. (hereinafter called the Purchaser) of the other part.

Whereas :—

(A) The Vendor is the estate owner for a legal estate in fee simple of the property hereinafter conveyed for his own absolute use and benefit [subject as hereinafter mentioned but otherwise] free from incumbrances.

(B) The said property was on the 1st day of July 1948 used [as a single private dwellinghouse and curtilage] *or* [for the purposes more particularly described in the [First] Schedule hereto] and for such other purposes as such user as aforesaid would authorise under or by virtue of the Town and Country Planning Act 1947.

[(C) Since the 1st day of July 1948 aforesaid the said user of the said property has been altered [*or* modified] to include user for the purposes of — in accordance with a development permission dated the day of .]

(D) The Vendor has agreed with the Purchaser for the sale to him of the said property [subject as aforesaid but otherwise] free from incumbrances.

Now in pursuance of the said agreement and in consideration of the sum of £ to the Vendor now paid by the Purchaser (the receipt whereof the Purchaser hereby acknowledges) This Deed Witnesseth as follows :—

(1) The Vendor as Beneficial Owner [*or as the case may be*] hereby conveys to the Purchaser [All that piece or parcel of land situate in the City of Destruction containing in area be the same little more or less Together with the messuage or tenement and outbuildings erected thereon and known as Doubting Castle all which said premises are more particularly delineated in the plan[1] drawn on the margin hereof and thereon coloured red] *or* [All those pieces or parcels of land

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[1] This should be a copy from the Development Plan if this exists, but it should be capable of identification with any plan on earlier title deeds.

situate in the Parish of Vanity Fair in the Slough of Despond more particularly described in the [First] Schedule hereto which said pieces and parcels of land are more particularly delineated [but by way of identification only] in the plan drawn in the margin hereof and therein coloured green] To HOLD the same unto the Purchaser in fee simple [subject to the restrictions imposed by a development permission dated the day of and made by *or* to a charge for securing the repayment of £ by instalments dated and made but otherwise free from incumbrances][2]

(2) The said property is held at the date hereof for use [as a single private dwellinghouse and curtilage [including a garage][3]] *or* [for the purposes more particularly described in the [First] Schedule hereto] together with the right to use the said property for such other purposes as may now or hereafter be authorised in connection with such user aforesaid under or by virtue of the Town and Country Planning Act 1947 or any Act for the time being amending or replacing the same.

(3) If the said property or any part thereof is at the date hereof subject to any restriction or other obligation [other than designation for compulsory purchase][4] imposed under or by virtue of the Town and Country Planning Act 1947 whereby the said property or any part thereof cannot lawfully be used and enjoyed for any or all of the purposes hereinbefore contained such restriction or obligation shall be deemed to be an incumbrance[5] made occasioned or suffered by the vendor within the meaning of the covenant implied by the Law of Property Act 1925 by the vendor being expressed to convey as Beneficial Owner [*or as the case may be*].

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[2] What particular matters arising under the Act will be regarded as incumbrances remains to be seen, but it is thought that general restrictions under the Act or regulations made under the Act will not require mention in the conveyance. Security for development charges will not usually be in the form of charges on the land according to the Chairman of the Central Land Board (*ante*, p. 123).

[3] It should be noted that the development permission for the "erection or construction and the maintenance improvement or other alteration" of a building within a curtilage does not include a garage: SI 958/1948. If the premises include a garage it would, therefore, be desirable specifically to mention it.

[4] If land is sold subject to designation for compulsory purchase this exception seems necessary but not otherwise.

[5] Such a restriction or obligation might not be technically an "incumbrance", but this clause should bring any breach of the obligation within the covenants for title and entitle the purchaser to damages even if the sale is by, *e.g.*, a mortgagee.

[(4) The Vendor for himself his executors administrators and assigns hereby covenants with the Purchaser and his successors in title that he the Vendor his executors administrators or assigns will at all times hereafter indemnify the Purchaser or his successors in title against all expenses costs claims or demands whatsoever in respect of any act matter or thing done or suffered by or on behalf of the Vendor [or any person through whom he derives title to the said property hereby conveyed] whereby the Purchaser or his successors in title shall be put to any expense cost claim or demand whatsoever under or by virtue of the Town and Country Planning Act 1947 in respect of the said property hereby conveyed][6]

[*Add: any covenant to observe restrictive or other covenants, statutory acknowledgment and certifiate of value, if and so far the same may be relevant.*]

IN WITNESS etc.

The [First] Schedule above referred to

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[6] The purpose of this clause is to meet the case where any unauthorised user or development has taken place prior to conveyance, *e.g.*, failure to obey an abatement notice, control of advertisements or the erection or use of a building contravening the planning regulations. It is thought that it could only be inserted in pursuance of a term in the contract, but where the premises involve much development it may not be unreasonable to insist on it. How far it is necessary in view of cl. 3 can only be determined after that clause has been construed.

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"Planning Law" Notes

Most of the Statutory Instruments to be made under the Town and Country Planning Act 1947 have now been issued. A Table showing rule-making powers and their exercise will be found at p. 310, *post*. Important exceptions are the regulations "for regulating the form and content of development plans" (s. 10 (2)) and the grant regulations under ss. 93–96.

In the course of an address given by Sir Malcolm Eve, K.C., the Chairman of the Central Land Board, on July 15, 1948, to the Chartered Auctioneers' and Estate Agents' Institute, the following points were made:

The receipt of the Central Land Board is evidence that an "S" claim—a claim for loss of development value—was made in time. If the receipt is not received within ten days of making the claim, it should be asked for.

Question 20 (a) on Form S.1 (claim for loss of development value) relates only to near ripe land of *registered* builders.

Question 20 (c) relates principally to "single plot near ripe land" but not exclusively. A developer who is not within (a) may bring himself within (c).

As regards Question 20 (b), no promise has been made by the Minister concerned as regards industrial concerns.

Where an application has been made for a certificate that land is dead ripe and there is likely to be delay in the grant of the certificate, the applicant should put in an "S" claim on the global fund to make sure that if the certificate is not granted he is not out of time for making a claim for loss of development value.

But the costs of valuation on an abortive "S" claim will not be allowed.

In valuing "existing use" it is necessary to have regard to the fact that 10 per cent. increase in the cubic content is free of liability to development charge.

Development charges will not be fixed more than one year before the development is to take place.

A figure announced by the Board for a development charge will be good for twelve months.

The following were among the questions put and answered after Sir Malcolm had ended his address:

What is the restricted value of a site (other than a war-damaged site) in the heart of a town?—See s. 61 (2) (*a*). The value may be quite low.

What is meant by the "state" of a property? Its physical state.

Can a four-storied house be replaced by a two-storied house of the same cubic capacity without attracting development charge? Yes.

Is development charge attracted by the conversion of large flats into smaller ones by internal sub-division? No.

Should freeholder and leaseholder make an "S" claim together? It would be convenient if this were done, but the Board is under an obligation to value the loss suffered by each interest separately.

If development is carried out in more than one stage, is development charge payable by equivalent stages? Yes it can be.

Should the valuer in valuing a property for an "S" claim take into account only probabilities or should he take into account all possibilities, on the ground that if the improbable becomes a reality and the client has to pay a development charge he may be entitled to complain that his valuer should have advised him to claim on that footing? That is part of the art of valuing.

Heard at the meeting: "The Rules and Regulations under the Act govern every breath we draw, with special instructions on how to let it out again".

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *c/o* SWEET & MAXWELL, LTD., 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Owing to shortage of paper the Publishers are reluctantly compelled to refuse requests for extra copies of particular issues of the Journal.

Control of Land Use

By DESMOND HEAP, LL.M., L.M.T.P.I.,

Comptroller and Solicitor to the Corporation of the City of London

I. Planning Law and the Meaning of "Development" (*ante*, p. 7).

II. Planning Law and Development Permission (*ante*, p. 63).

III. Planning Restrictions and the Recovery of Compensation (*ante*, p. 124).

IV. Further Observations on the Meaning of "Development" and the Need for and Methods of Obtaining Planning Permission therefor (*ante*, p. 208).

V. **Planning and the Designation, Development and Disposal of Land by Local Authorities.**

VI. Planning Control and its Enforcement.

VII. Planning and the Preservation of Trees, Special Buildings and Amenities.

V. Planning and the Designation, Development and Disposal of land by Local Authorities

Designation of Land as Liable to Compulsory Purchase

1. Many things may be provided for in a Development Plan made under the Town and Country Planning Act, 1947 (hereinafter called "the 1947 Act"), but one of its most important features is its designation of land as being liable to compulsory purchase by a local authority (s. 5 (2)). Land owners will note, however, that the Minister may not approve a Development Plan which designates land as liable to compulsory purchase if in his view the land is not likely to be acquired within ten years (or seven years in the case of agricultural land within the meaning of the Rating and Valuation (Apportionment) Act, 1928) of the approval of the plan (s. 5 (4)).

2. It is necessary to stress that it does not follow from the foregoing that because a particular plot of land stands for the time being undesignated in a Development Plan that it will be immune from compulsory acquisition during the

aforementioned periods of either ten or seven years respectively, because in the first place a Development Plan has to be revised at least once every five years (s. 6 (1)) and in the second place the fact that land stands undesignated in a Development Plan does not prejudice any power of compulsory acquisition otherwise available to a local authority.

The position, in short, is that while designated land is likely to be acquired compulsorily within ten years or seven years, as the case may be, it does *not* follow that undesignated land will not be so acquired, because the 1947 Act does not affect existing powers of compulsory acquisition already conferred on Ministers or on local authorities. What the 1947 Act does is to confer new and wider powers of compulsory purchase which are in addition to, and not in derogation of, those which already exist. Moreover, these new powers, whilst they will normally be exercised after a Development Plan has come into operation, can, in certain circumstances, be resorted to during the period when the first plans are in course of preparation and before they come into operation (see ss. 37 (2) and 38 (2)).

3. There can be no doubt that a new and comparatively simple method of acquiring land compulsorily for almost any conceivable purpose is conferred by the 1947 Act upon local authorities through this new medium of designation as liable to compulsory purchase and it may well be that in the future local authorities will be urged to get compulsory purchase powers for land through the medium of designation in a Development Plan, rather than through the more elaborate procedure of securing a special Act of Parliament. If this should prove to be the case it will mean that the Minister of Town and Country Planning will have a very wide control indeed over the land acquisition powers of local authorities. There is nothing astonishing in this when it is remembered that in the Act which established the Minister of Town and Country Planning (the Minister of Town and Country Planning Act, 1943) the Minister was charged with the duty of "securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales".

4. The land capable of designation under a Development Plan falls into two categories which will now be considered.

In the first category is land designated for compulsory purchase by any Minister, local authority, or statutory undertaker, the land being required for the purposes of any of their respective functions and including land which the Minister, the local authority or the statutory undertaker in question is already authorised to acquire compulsorily under some other enactment (s. 5 (2) (*b*)).

The authority for acquiring land in this first category is s. 37 (1) of the 1947 Act and the procedure of acquisition is that contained in the Acquisition of Land (Authorisation Procedure) Act, 1946 (s. 37 (4) of the 1947 Act). This procedure is of two kinds which are as follows:—

(1) the normal procedure under s. 1 of the 1946 Act whereby the compulsory acquisition of land is effected by means of a compulsory purchase order made by the acquiring authority and confirmed by the appropriate confirming authority after (in the case of objections) either a public inquiry or a private hearing or even (in certain events) without either of these, and

(2) the speedy procedure under s. 2 of the 1946 Act whereby compulsory acquisition is effected in urgent cases by means of an authorisation in writing granted by the Minister. This speedy procedure is of temporary duration and remains in force until April 18, 1951 (although this period is liable to extension under s. 2 (9) of the 1946 Act) and under it the Minister can grant the authorisation in writing without holding either a public inquiry or a private hearing into any objections which may have been made although he must consider any such objections.

5. The second category of land which may be designated in a development plan as liable to compulsory purchase by the appropriate local authority is as follows:—

(1) any land within, or contiguous or adjacent to, an area of comprehensive development; and

(2) any other land which, in the opinion of the local planning authority, ought to be compulsorily acquired in order to secure that it will be used in the manner proposed by the development plan (s. 5 (2) (*c*)).

An "area of comprehensive development" is specially defined (s. 5 (3)) and includes any area to be developed or redeveloped as a whole for the purpose of—

(1) dealing with blitzed land (areas of extensive war damage);

(2) dealing with blighted land (areas of bad layout or obsolete development);

(3) for accommodating overspill consequent upon the redevelopment of blitzed areas or blighted areas; or

(4) for any other purpose specified in the development plan.

The unqualified scope of this last provision is worthy of special note as also is the provision that land may be included in an area of comprehensive development whether or not provision is made in a Development Plan for the development or redevelopment of that particular land (s. 5 (3)).

6. Land in this second category is liable to compulsory acquisition by the "appropriate local authority" and this means the council of the county borough or county district where the land is situated (s. 38 (1)) or, if the Minister so authorises the council of some other local authority as, for example, a county council (s. 38 (3)). The procedure for acquiring land designated in this second category is by means of a compulsory purchase order made in accordance with the normal procedure enacted in s. 1 of the Acquisition of Land (Authorisation Procedure) Act, 1946 (s. 38 (4) of the 1947 Act), the speedy procedure referred to above under s. 2 of the 1946 Act not being available (s. 38 (4)).

It is further to be mentioned in connection with this second category of land designated as liable to compulsory purchase that provision is made whereby such land may vest in the acquiring authority even before the completion of the conveyance, for the Minister is empowered (s. 39 (1)) when confirming the compulsory purchase order to include (provided he is requested so to do and not otherwise) in the Order a Direction that the provisions of the Sixth Schedule to the Town and Country Planning Act, 1944, relating to "Procedure for completion of compulsory purchase under orders providing for expedited completion" shall apply. The Eleventh Schedule to the 1947 Act contains, *inter alia*, the Sixth Schedule to the 1944 Act set out as amended by the 1947 Act itself.

7. Landowners may note that if land designated as subject to compulsory purchase (whether under category 1 or 2 mentioned above) is not, in fact, acquired by the local authority or Minister concerned within twelve years (eight years in the case of agricultural land within the meaning of the Rating and Valuation (Apportionment) Act, 1928) from the date of the designation becoming operative, the landowner can *require* the purchase of the land to be dealt with within six months and if it is not so dealt with the land is automatically made

free of designation (s. 9). But, all this, of course, is without prejudice to further redesignation in some amendment of the Development Plan made at one of the compulsory quinquennial revisions or, indeed, at any time if the local planning authority so desires.

Accordingly, a local planning authority, if it can get the Minister's approval, can keep the curse (if one may so express it) of liability to compulsory purchase hanging, like the Sword of Damocles, over an owner's land for an indefinite period. The implications of all this on the ability of an owner to sell his land are obvious but for any injurious affection which an owner sustains by reason of the fact that no one will look twice at his land with a view to purchase, no compensation is payable. Indeed, this matter of injurious affection, for which compensation was payable under the Town and Country Planning Act, 1932, and its predecessors, now falls from the planning picture.

8. The first Development Plans under the 1947 Act are to be made within three years of July 1, 1948, and after they come into force it will be a condition precedent to the compulsory acquisition of land under the 1947 Act that the land shall have been designated in a Development Plan.

During the pre-plan stage, that is to say, during the three years when the first development plans are being prepared there are, however, additional powers of compulsory acquisition of land without designation. These are contained in s. 37 (2) relating to acquisition by the Minister of Works and the Postmaster-General who can employ both the normal procedure under s. 1 of the Acquisition of Land (Authorisation Procedure) Act, 1946, and also the speedy procedure under s. 2 of that Act (s. 37 (4) of the 1947 Act).

Similarly, during the pre-plan stage the Minister may authorise the council of a county borough or county district (s. 38 (2)) or any other local authority as, for example, a county council (s. 38 (3)), to acquire compulsorily any land which is—

(a) required for any purpose which appears to him to be immediately necessary in the interests of proper planning (no other powers of compulsory acquisition being available); or

(b) required for any other purpose for which, under s. 10 (1) (*c*) or (*d*) of the Town and Country Planning Act, 1944, a local planning authority could be authorised to acquire land before July 1, 1948 (s. 38 (2)).

The mode of acquisition will again be by compulsory purchase order made in accordance with the normal procedure under s. 1 of the Acquisition of Land (Authorisation Procedure) Act, 1946 (s. 38 (4)), but the speedy procedure by way of ministerial authorisation in writing under s. 2 of that Act will not apply (s. 38 (4)). Provision, however, is made for expedited completion of purchases (s. 39 (1)).

9. Further powers of compulsory purchase by local authorities and also by the Minister of Works of buildings of special architectural or historic interest are contained in s. 41 of the 1947 Act, the mode of acquisition being in accordance with the normal procedure under s. 1 of the Acquisition of Land (Authorisation Procedure) Act, 1946, the speedy procedure under s. 2 of that Act not being applicable (s. 41 (3)).

Development of Land by Local Authorities

10. Once a local authority has acquired land under the 1947 Act it can, if it wishes, embark upon the actual, positive development of that land in accordance with any Development Plan proposed or in operation. This is secured by s. 44 of the 1947 Act which incorporates (with amendment) s. 20 of the Town and Country Planning Act, 1944.

11. The 1944 Act introduced an entirely new principle by conferring on local authorities power to carry out development of land themselves provided such land was included in either—

(a) an area of extensive war damage and any associated overspill area; or

(b) an area of bad layout and obsolete development and any associated overspill area.

Land not included in any such areas could not be developed by the local authority. Moreover, by virtue of sub-s. (3) of s. 20 of the 1944 Act as originally enacted, a local authority could not carry out any development of land themselves if private enterprise was willing to do so. In short, under the 1944 Act a local authority could carry out in blitzed or blighted areas and their associated overspill areas (but not elsewhere) such development only as private enterprise would not undertake.

12. S. 44 of the 1947 Act by incorporating s. 20 of the

1944 Act *minus its sub-s.* (3) (and as set out in amended form in the Eleventh Schedule to the 1947 Act) abolishes the former restrictions on a local authority's right to undertake the actual development of land with the result that a local authority can now, subject to the Minister's approval, carry out the development of any land which they have acquired under ss. 38 or 40 of the 1947 Act.

Disposal of Land by Local Authorities

13. A local authority having acquired land under the 1947 Act may not desire to develop it itself. It is not bound to do so and is empowered to dispose of the land, with the Minister's consent, to anyone who is prepared to develop it in accordance with any relevant Development Plan (s. 44 of the 1947 Act incorporating s. 19 of the 1944 Act).

A local authority can thus make land available for development to private individuals wishful of carrying out development in accordance with a Development Plan but unable to do so by reason of the fact that they cannot obtain possession of the necessary land. Local authorities under the 1947 Act can acquire land compulsorily from an unwilling vendor and then dispose of it to anyone wishing to develop it in accordance with a Development Plan, but it is important to note that a local authority so disposing of land will not be able to convey the freehold nor grant a lease for more than ninety-nine years *except in exceptional circumstances* (1944 Act, s. 19 (4) and (5)) the object of the 1947 Act clearly being that once land has been placed in public ownership the authority owning the land shall not thereafter divest itself of the freehold or allow the land to be otherwise broken up into a multiplicity of private individual interests.

Acquisition and Disposal of Land by the Central Land Board

14. Having dealt with the powers of local authorities to acquire and to dispose of land under the 1947 Act it will be as well (if only for the sake of completeness) to make reference to the power in this behalf possessed by the Central Land Board.

The Central Land Board may acquire land by agreement made with the approval of the Minister (s. 43 (1)) or compulsorily (s. 43 (2)) by means of a compulsory purchase order made in accordance with the normal procedure under s. 1 of the Acquisition of Land (Authorisation Procedure) Act, 1946

(s. 43 (3)) but the speedy procedure under s. 2 of that Act by means of a ministerial authorisation in writing will not apply (s. 43 (3)). Provision, however, is made for expedited completion of compulsory purchases by the Board (s. 43 (3)).

15. The Central Land Board, having acquired land may dispose of it (s. 43 (4)) for development in accordance with any permission for development granted under the Act (s. 43 (1)). The Board have no power to develop the land themselves. In disposing of land the Board may do so at an inclusive figure which includes not only the purchase price of the land paid to the Board by the purchaser but also the amount of any development charge payable in respect of the development proposed to be undertaken by the purchaser (s. 43 (1)).

16. The result of these provisions is that if a landowner is not willing to develop his land in accordance with the provisions of a Development Plan and is at the same time unwilling to allow any other person to do so, the Central Land Board will be able to acquire the land from him compulsorily and then dispose of it, at a figure which includes both the purchase price of the land and also the amount of any prospective development charge, to anyone willing to develop the land in accordance with the Development Plan.

It is worthy of special note that whilst the Central Land Board can only dispose of land in accordance with such directions as may be given to them by the Minister (s. 43 (4)), there is nothing in the 1947 Act to prevent the Minister directing that the Board shall sell the freehold of the land. In this respect the Board's power to dispose of land under s. 43 (4) of the 1947 Act is less fettered than the power of a local authority to dispose of land under s. 19 of the Town and Country Planning Act, 1944, as incorporated with amendment by s. 44 (1) of the 1947 Act because, by s. 19 (5) of the 1944 Act, a local authority can never, except in exceptional circumstances, do more than dispose of land by way of lease not exceeding ninety-nine years.

Planning as Affecting Interests in and Value of Land

By E. J. Rimmer and J. Stuart Daniel, Barristers-at-Law

I. Main Consequences of the Act of 1947 (*ante*, p. 15).
II. Compulsory Acquisition (*ante*, p. 71).
III. New Principles of Compensation for Compulsory Acquisition (*ante*, p. 132).
IV. Claims on the £300 million Fund (*ante*, p. 222).
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VI. Mineral Rights and other Special Cases.

V. Development Charges

1. Previously in this series of articles we have dealt with the subject matter in the sequence of the Act of 1947, but Mr. Leach's article in this Journal last month, pp. 263–271, has anticipated a treatment of the subject of development charges by that method. It would be mere repetition for us to deal with ss. 69 to 74 of the Act in this article and we refer rather to Mr. Leach's article which in our opinion correctly states the legal effect of those sections. We shall proceed here to consider and emphasise the principles governing the levy and assessment of development charges, the exemptions from development charge and certain special cases arising under this heading.

2. As indicated in the introductory article the development value in land has now been transferred from the owner to the State by the simple expedient (an expedient simple in principle at any rate) of requiring the developer to pay a development charge to the Central Land Board as a condition of carrying out the development.

3. The government, as Mr. Silkin has admitted, have had second thoughts on the question of the principle on which development charges shall be assessed. S. 70 (3) of the Act provides :

> " . . . regulations made under this Act . . . may prescribe general principles to be followed by the Central Land Board in determining . . . whether any and if so

> what development charge is to be paid . . . and . . . such regulations may in particular provide for securing that the amount of the said charge shall be determined on different principles in relation to operations or uses of different classes, or in relation to operations or uses carried out or begun at different periods."

Here was the clearest possible indication, and in the passage of the Act it was proclaimed as such, that the Central Land Board would receive detailed guidance on many different types of case and subject to that guidance would have a discretion in any case to fix the charge at lower than one hundred per cent. of the development value if they were so minded.

4. But the regulations which have now been issued (Town and Country Planning (Development Charge) Regulations, 1948, *ante*, p. 241) are of a very different character. There is no provision at all for different types of case and there is virtually no discretion left to the Board in the matter of their assessment.

5. The principles of assessment are set out in the Schedule to the regulations. By paragraph 1 *the governing principle* by which the Board are to be guided is that the "Development charge shall be determined so as to secure, so far as is practicable, that land can be freely and readily bought and sold or otherwise disposed of in the open market at a price neither greater nor less than its value for its existing use".

Paragraph 2 of the Schedule provides that the charge shall not be more than the amount of the additional value of the land measured by normal processes of valuation, due to planning permission; and paragraph 3, that the charge shall not be less than this amount *unless* the Board think it should be less in order to comply with the governing principle.

6. The purpose of the governing principle, when read together with paragraph 3, appears to be this: that the owner of land is to be made aware beyond all doubt that he retains no value in land other than its value for its existing use. If he were left with even a hope that the development charge would be less than the full difference between existing use value and value for development he would not be prepared to sell at existing use value; for a purchaser who shared such a hope might well be prepared to pay more. Such a position would result in great uncertainty and would leave a proportion of development value, varying perhaps in different cases,

in the hands of the owner. Considerations of this kind may well have operated on the Minister in deciding to adopt a rigid, uniform and hundred per cent. basis of assessment.

7. The debate on these regulations in the House of Commons (noted in the previous issue at p. 245) raises some interesting points in this connection. One of the objects that were intended to be achieved by the flexibility originally proposed was that the Board should be able to offer an incentive in any given case for the carrying out of desirable development. In debate the regulations, as now approved, were attacked on the grounds, *inter alia*, that they afforded no incentive to develop. The Minister met this attack by saying in effect that the incentive would be the same as before. The purchaser would pay no more and the vendor would obtain the new market value of his land. While this is clear enough in the case of the purchaser, the Minister's reasoning as regards the owner is a little difficult to follow. While it is true that an owner will not be induced to withhold his land from development in the hope that some different development subject to a lower charge will present itself, it is surely also true that an owner who would have been willing enough to sell good building land at a good building price may prefer to retain his land for its existing profits, its amenity value, or various other reasons than to sell at existing use value. The Minister spoke of the powers of the Central Land Board to acquire land as a further incentive in the case of a recalcitrant owner; but these are more of a whip than a carrot, though their existence in reserve may operate as something between the two!

8. But what is to happen in a case where two or more prospective purchasers are bidding against each other for the same land? In such a situation it would appear that the owner is likely to obtain something more than the existing use value unless one of the purchasers induces the Central Land Board to exercise its powers of purchase in his favour. But it is to be observed that the Central Land Board cannot acquire land compulsorily unless the Minister is satisfied that it is expedient in the public interest and, further, a purchaser will have to decide whether an approach to the Central Land Board will not result in a sale to a rival bidder. This problem cannot be met by an increased development charge since by paragraph 2 of the Schedule this must not be more than the development value " measured by normal processes of valuation ".

9. The Minister did, however, indicate that there would be some measure of flexibility in the fixing of development charges. In the first place he pointed out that in areas where development was not taking place the prospect of development would be small and the development charge correspondingly less. He also stated that the amount of the charge would, in any given case, be a matter for discussion and that the Board would be prepared to hear the views of the developer or his agent and to arrive at a figure by negotiation. But it is to be particularly noted that the Central Land Board's decision as to the amount of the development charge is final and without appeal and when the decision has been given it will be for the would-be developer to decide whether or not the prospective margin of profit left is sufficient to induce him to proceed.

10. There is one point of some obscurity in the regulations, that is, the provision in paragraph 3 of the Schedule that the charge may be less than the full development value if the Board think it ought to be so " in order to comply with the governing principle ". It was urged in the debate that a departure from the full development value would inevitably involve a departure from the governing principle. The Minister confessed that he could not quote a specific case to which this provision should be applied, and stated that it had been inserted in the regulations largely as a matter of precaution.

Special Cases under Part VIII of the Act

11. The fourth and final paragraph of the Schedule to the regulations provides that in the case of any land of a class mentioned in Part VIII of the Act (special cases), if the Board think that the principles discussed above are inappropriate, they shall apply the governing principle subject to such modification as they think appropriate to the special case. This provision was attacked in the debate on the grounds that it gave the Board unfettered powers in these cases. It must, however, be remembered that in several of the cases comprised in Part VIII of the Act it is expressly provided that the full development charge shall not be payable. It was therefore necessary either to deal with these cases in detail in the regulations or to give the Central Land Board some latitude in applying the governing principle to them.

12. The cases in question are :

S. 76. Under this section where previous planning permission (*i.e.*, before the 1947 Act) had been given subject to conditions restricting the period for which works might remain on land, then if, as they are entitled to under the section, the local planning authority grant permission, at the expiration of the period, for the retention of the works, s. 69 (4) is applied and a development charge will become payable. The literal application of the Schedule would clearly be difficult in such a case since there would be no "existing use value" in the normal sense; indeed the value without the permission might well be a minus quantity. We do not attempt to forecast the principles of assessment which will be applied by the Board in such a case.

S. 77. Under this section a development charge will be payable in respect of development (other than the completion of unfinished buildings) for which interim permission had been given but which had not been carried out before the appointed day. Here there is not so much difficulty and the normal principles of the Schedule will presumably apply.

S. 81. This section deals with mineral workings and will be separately considered in a later article.

S. 86. This section deals with cases where development after the appointed day may involve payment to a local authority under s. 48 of the Act or otherwise in respect of works carried out by that authority. Such a payment might be in some ways analogous to a development charge and the section provides that it shall be taken into account when the development charge, if any, comes to be fixed. This is a clear case for modification of the principles in the Schedule and the development charge will presumably be based on the difference, if any, between the amount of the payment and the amount of the full development value.

Ss. 86 and 87. These sections are concerned with Crown land and no difficulty arises.

Total Exemption from Development Charges

13. The different classes of development which will escape development charges altogether have already been set out in previous articles in this Journal and it is only necessary to summarise them as follows :

(*a*) Exemptions under Part VIII of the Act :

S. 78. Unfinished buildings.

S. 80. Land satisfying certain special conditions which constitute "ripe for development" in respect of which the Minister grants a certificate. (These two sections will be discussed in our next article.)

S. 82. Land held by local authorities for general statutory purposes.

S. 83. Land acquired by local authorities and development corporations for comprehensive development or re-development.

S. 84. Operational land of Statutory Undertakers.

S. 85. Certain land held on charitable trusts.

(*b*) Exemptions under the Third Schedule of the Act. These were set out and discussed on pp. 41 to 43 of the Journal.

(*c*) Exemptions under the Town and Country Planning (Development Charge Exemption) Regulations, 1948, made pursuant to s. 69 of the Act.

These are set out on pp. 236 to 240 of the Journal and may be said to fall within three groups, *i.e.*, those giving the same tolerance for buildings and use of land after the appointed day as applied in the Third Schedule of the Act to those on the appointed day; those giving exemption for operations and uses which will not require planning consent and those giving exemption to several developments not previously referred to. This latter group includes certain buildings requisite for the use of farming and forestry, temporary uses of land for various purposes and the display of advertisements.

(*d*) The erection, enlargement, improvement or alteration of dwelling-houses occupied by persons engaged or employed in agriculture so long as they are so occupied.

Though this exemption is not included in the regulations, the Lord Chancellor, on behalf of the Government, gave the following undertaking in the House of Lords on June 3, 1948, (*H. L. Debates*, Vol. 156, col. 251), *viz*:—

"Instructions will be issued to the Central Land Board to remit or postpone the collection of development charges so long as the Board are satisfied that a house is reserved for a member of the agricultural population."

Near Ripe Land

14. As mentioned in our last article (at p. 230) there are to be special provisions for compensating the owners of "near ripe land" which, in effect, will exempt them from the burden of having to pay a development charge when they come to carry out the development of their land.

The position has been clarified, as regards registered builders, by the statement printed on p. 307 *post*. The position of owners of single plots, and as regards expenditure on roads, sewers, etc., in outline development is not yet settled: see hereon pp. 245, 246, *ante*. As regards mineral undertakers who own the freehold, the Minister has promised that they will get special treatment in a scheme "very like the builders 'near ripe' scheme": Press Notice, dated June 25, 1948; and see reg. 4 of the Minerals Regulations, 1948, *post*, p. 331.

"EXISTING USE" VALUE

There is reported in the *Estates Gazette* of July 17, 1948, at p. 59, a sale by auction of land which was held by the Hove Corporation under the Cultivation of Lands Order, 1939, for use as allotments (no rent being paid). The land was expressly offered for sale at its "existing use" value, the right to receive the compensation for loss of development value being reserved to the vendor. The land fetched a price exceeding £600 an acre.

"*Near Ripe*" *Land*

The terms of the arrangements for "near ripe" land to be made in England and Wales in the case of builders who claim on the £300 million fund were announced by the Central Land Board on July 12, 1948. A more detailed account of the arrangements, which are restricted to registered builders, is given in a pamphlet S. 1A (N.R.) which will be available at the Board's offices.

Generally only land held by a builder on January 7, 1947, and which he continues to hold on July 1, 1948, can be considered. Land acquired from a builder at existing use value by a public authority between August 6, 1947, and July 1, 1948, will normally be eligible. Builders who, in addition to holding land as mentioned above, were themselves building on their own land throughout the period 1934–8 or for a period of at least two years between January, 1937, and September, 1939, will automatically qualify. Those with a pre-war building record of less than two years or with no pre-war record at all will receive consideration according to the merits of their case. An advisory committee including representatives nominated by the National Federation of Building Trades Employers and officers of the Central Land Board is being set up to consider these and other cases which do not automatically qualify.

The builder will be allowed special treatment on a specified portion or "ration" of the land he now holds. This ration will be his "near ripe" land and he will receive a full payment on it for loss of development value out of the £300 million fund. The rest of his land, if any, will be eligible for ordinary treatment. The ration will be equal to the number of acres of his own land which he developed in the five years 1934–8. Those who were contract builders during the pre-war period (that is, did not build on their own land), may receive consideration.

In addition the builder may, when he develops land within his "near ripe" ration during the five years before payments are made from the £300 million fund, set off the development charge against the payment that will be due to him.

Question and Answer

The following conversation may be supposed to take place between an owner of property, Sir Orquard Question, and a solicitor, Mr. Dusty Answer.

Q. You know the estate I was developing before the war, near Hillstead—I take it that that is dead ripe land?[1]

A. No land is dead ripe until the Minister has issued his certificate.

Q. But half this estate has been built on, and the rest is ready to build on at ten minutes' notice!

A. Let us sort it out. We can forget about the part that is built on. As regards the rest of the estate—are there any houses in course of construction?

Q. Two only.

A. Then they can probably be ignored, too. They are sure to class as unfinished buildings under s. 78 and will not attract development charge or be eligible for a claim on the global sum. What about the remainder of the land—I suppose all the roadways and drainage have been put in?

Q. Yes. And I have had plans approved by the local authority.

A. What sort of plans? Lay-out plans?

Q. No. Actual plans of the buildings. We have several different designs for the various sized plots and they have all been submitted and approved by the council.

A. That seems to be all right. But the first requirement is planning permission.

Q. But I've got planning permission.

A. Have you? When did you get it?

Q. Way back before the war.

A. Then it isn't any good.

Q. What!

A. No. It lapsed on July 1, 1948.[2]

Q. Do you mean to say I have to apply for planning permission all over again?

A. Yes.

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[1] See s. 80 of the Act.

[2] See [1948] J. P. L. 69.

Q. And do you mean that until I get it I can't apply for the Minister's certificate?

A. I didn't say that. You won't get the certificate before you get your planning permission but there is no reason why you should not apply for both at once.

Q. You know, this is rather unpleasant. I've been given a strong tip that the council are going to get a compulsory purchase order. What will happen if they do?

A. If you can get your certificate before they serve notice to treat, you will be all right.

Q. And if I don't?

A. Then it looks as if the council will get your property at its restricted value.[3]

Q. Leaving me to claim on the precious global fund, I suppose? This is robbery in broad daylight! I shall never get a certificate in time. I don't suppose there is a form of application available yet.

A. I believe one has just been issued by the Ministry.[4] Of course, for the application for permission to develop you must get the form issued by the county council.[5]

Q. Should I ask for permission for precisely the same development as before?

A. Yes, certainly, if you want your certificate. And say in your application that you had already got permission under the old law.

Q. Do you mind if I use your telephone? I want to speak to my surveyor.

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[3] See [1948] J. P. L. 170.

[4] LRD. 1.

[5] [1948] J. P. L. 82, 218.

Statutory Instruments

TABLE

Showing Rule-making Powers of the Town and Country Planning Act, 1947, which have been exercised

s. 2	Central Land Board Regulations, 1947 (S. R. & O., 1947, No. 2294).
ss. 9, 19, 20, 22, 24, 27, 30, 33, 45, 79, 84, 105, 110, 111, Sched. X, para. 13	T. & C. P. (General) Regulations, 1948 (SI 1948, No. 1380)[1] (*post*, p. 315).
s. 12	T. & C. P. (Use Classes) Order, 1948 (SI 1948, No. 954)[1] (*ante*, p. 145).
ss. 13, 14, 16, 114 .	T. & C. P. (General Development) Order, 1948 (SI 1948, No. 958)[1, 2] (*ante*, p. 149).
s. 14	SI 1948, No. 958; see s. 13 above.
s. 14 (4) . . .	T. & C. P. (Erection of Industrial Buildings) Regulations, 1948 (SI 1948, No. 1309) (*post*, p. 314).
s. 15	T. & C. P. (City of London Applications) Direction, 1948 (SI 1948, No. 1460) (*post*, p. 327).
s. 16	SI 1948, No. 958; see s. 13 above.
s. 19	SI 1948, No. 1380; see s. 9 above.
s. 20	SI 1948, No. 1380; see s. 9 above.
s. 22	SI 1948, No. 1380; see s. 9 above.
s. 24	SI 1948, No. 1380; see s. 9 above.
s. 27	SI 1948, No. 1380; see s. 9 above.
ss. 28, 111 . .	T. & C. P. (Tree Preservation Order) Regulations, 1948 (SI 1948, No. 1436) (*post*, p. 322).
s. 30	SI 1948, No. 1380; see s. 9 above.
ss. 30, 39 . . .	T. & C. P. Acts, 1944 and 1947 (Registration of Orders and Lists of Buildings) Rules, 1948 (SI 1948, No. 1213)[3] (*ante*, p. 242).
s. 31	T. & C. P. (Control of Advertisement) Regulations, 1948 (SI 1948, No. 1613) (*post*, p. 332).
s. 33	SI 1948, No. 1380; see s. 9 above.
s. 34	T. & C. P. (Authorisation of Delegation) Regulations, 1947 (S. R. & O., 1947, No. 2499).
s. 39	SI 1948, No. 1213; see ss. 30, 39 above.
s. 45	SI 1948, No. 1380; see s. 9 above.

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[1] SI 1948, Nos. 711, 902, 954, 955, 958, 1188, 1189, 1380, 1461, may be regarded as the most important in the sense that they are necessary for understanding the normal working of the Act.

[2] See also SI 1948, No. 1437, *post*, p. 325.

[3] See also SI 1948, No. 1283, *post*, p. 313.

s. 49 (5)	Stopping Up of Highways (Concurrent Proceedings) Regulations, 1948 (SI 1948, No. 1348) (*post*, p. 314).
ss. 60, 64 (2), 111	Claims for Depreciation of Land Values Regulations, 1948 (SI 1948, No. 902)[1] (*ante*, p. 142).
s. 64 (2)	SI 1948, No. 902; see s. 60 above.
s. 69 (2) (*b*)	T. & C. P. (Development Charge Exemptions) Regulations, 1948 (SI 1948, No. 1188)[1] (*ante*, p. 236).
ss. 70 (2) (3), 111	T. & C. P. (Development Charge) Regulations, 1948 (SI 1948, No. 1189)[1] (*ante*, p. 241).
ss. 73 (1), 102 (1)	T. & C. P. (Making of Applications) Regulations, 1948 (SI 1948, No. 711)[1] (*ante*, p. 82).
s. 75 (8)	T. & C. P. (Enforcement of Restriction of Ribbon Development Acts) Regulations, 1948 (SI 1948, No. 1520) (*post*, p. 328).
s. 76 (6)	T. & C. P. (Enforcement of Restriction of Ribbon Development Acts) Additional Regulations, 1948 (SI 1948, No. 1126) (*ante*, p. 235).
s. 79	SI 1948, No. 1380; see s. 9 above.
ss. 81, 111	T. & C. P. (Minerals) Regulations, 1948 (SI 1948, No. 1521) (*post*, p. 330).
s. 81 (4)	T. & C. P. (Modification of Mines Act) Regulations, 1948 (SI 1948, No. 1522) (*post*, p. 332).
s. 82 (1) (*c*)	T. & C. P. (Local Authorities' Land: Exceptions to section 82) Regulations, 1948 (SI 1948, No. 1461)[1] (*post*, p. 334).
s. 84	SI 1948, No. 1380; see s. 9 above.
s. 101	T. & C. P. (Transfer of Property and Officers and Compensation to Officers) Regulations, 1948 (SI 1948, No. 1236) (*post*, p. 312).
s. 102 (1)	SI 1948, No. 711; see s. 73 (1) above.
s. 105	SI 1948, No. 1380; see s. 9 above.
s. 110	SI 1948, No. 1380; see s. 9 above.
s. 111	SI 1948, No. 902; see s. 60 above. SI 1948, No. 1189; see s. 70 (2) (3) above. SI 1948, No. 1380; see s. 9 above. SI 1948, No. 1436, see s. 28 above. SI 1948, No. 1521, see s. 81 (1) above.
s. 114	SI 1948, No. 958; see s. 13 above. T. & C. P. Delegation (London) Regulations, 1948 (SI 1948, No. 1459) (*post*, p. 326).
s. 119	T. & C. P. Act, 1947 (Appointed Day) Order, 1948 (SI 1948, No. 213).
Sched. III, para. 6	T. & C. P. (Use Classes for Third Schedule Purposes) Order, 1948 (SI 1948, No. 955)[1] (*ante*, p. 148).
Sched. VII, para. 1 (2)	Acquisition of Land (Claims for adjustment of compensation for War Damaged Land) Regulations, 1948 (SI 1948, No. 207).
Sched. X, para. 13	SI 1948, No. 1380; see s. 9 above.

Town and Country Planning (Transfer of Property and Officers and Compensation to Officers) Regulations, 1948

(SI 1948, No. 1236)

[SUMMARISED]

THESE Regulations are made under s. 101 of the Town and Country Planning Act, 1947, and came into operation on July 1, 1948.

The Regulations provide for the transfer to local planning authorities (normally county or county borough councils), of property held and liabilities incurred for planning purposes before the coming into force of the Act by county district councils and joint planning authorities on July 1, 1948. Officers of these bodies who were in whole time employment on planning business are also transferred by the regulations to the employment of the new local planning authorities.

The Regulations also provide machinery for compensating persons who lose employment or remuneration as a result of the transfer of functions effected by the Act, similar to the machinery set up for the purposes of the National Health Service Act, 1946. A claimant must have served for at least eight years in central or local government employment (see definition of "existing officer" in reg. 14). If he has not refused a reasonably comparable office offered by a local planning authority to which he has been transferred (reg. 16) or made good his loss by obtaining other employment (Sched. para. 4) he will be eligible for "interim" payments of two-thirds of his net emoluments, with deductions if he gets other employment or unemployment benefit, for a period of up to three months (Sched. paras. 4 and 5). During this period his claim will be assessed. He will be expected to look for and take other suitable employment (Sched. paras. 5 (5) and 8). Compensation will be payable to him up to normal retiring age, and will be an annual sum based on a percentage of his net emoluments and the length of his service. The amount will be adjusted, in the light of the circumstances of the case, regard being had to any other emoluments which have or could have been obtained and the other factors mentioned in paras. 8 and 9 of the Schedule. The award will be subject to review for a period of two years. If pensionable in his old employment, he will have a right to a payment equivalent to his accrued pension rights as from the age at which he would have retired , and in this payment account will be taken of any rights that may have existed under the pension scheme in respect of widow's pension, death benefit or incapacity pension (Sched. paras. 11, 12, 15, 16 and 17). For persons over forty, an addition may be made in recognition of their loss of future pensionable service (Sched. para. 20).

If the claimant was not pensionable, compensation will cease at normal retiring age unless he had expected to continue for a substantial period thereafter, in which case he will receive compensation after that age, for life, at half the rate he was getting up to that age (Sched. para. 24). Overlap with pension or remuneration from public funds is avoided (Sched. paras. 13, 35 and 36). A claimant who is aggrieved by a decision of a compensating authority may appeal to referees appointed by the Minister of Labour and National Service after consultation with the Lord Chancellor (reg. 17).

Reference may also be made hereon to Circular No. 46.

Local Land Charges (Amendment) Rules, 1948

(SI 1948, No. 1283)

[SUMMARISED]

THESE Rules are made under the Land Charges Act, 1925 (15 Geo. 5, c. 22), and came into operation on July 1, 1948. They amend the Land Charges Rules, 1934 (S. R. & O. 1934, No. 285), as amended by subsequent Rules (S. R. & O. 1943, No. 1532).

R. 2 broadens the definitions contained in r. 2 of the 1934 Rules to include the Town and Country Planning Act, 1947, and planning charges arising out of that Act.

R. 3 provides for the creation of a new frame to Part III of the Register—Part III (*c*)—in which charges under the Act of 1947 will be registered (notwithstanding the introduction of this new frame existing entries in frames (*a*) and (*b*) of Part III will remain effective). The Schedule to the Rules sets out the addition to the form of the Schedule to the official certificate of search.

The charges registrable under Part III are:—

(*a*) enforcement notices under s. 23;

(*b*) notices taking effect under s. 30 (8) (lists of buildings of special architectural or historic interest) or s. 33 (proper maintenance of waste land, etc.);

(*c*) orders taking effect under s. 21 (revocation or modification of permission to develop), s. 26 (discontinuance of authorised uses, etc.), s. 28 (tree preservation) or s. 29 (building preservation);

(*d*) any other planning charges created by virtue of the Act of 1947.

Provision is also made for the charging of fees for entries and searches in the Register in respect of these matters (r. 7).

The responsibility for registering planning charges remains with county borough and county district councils. In London, the London County Council and the Common Council of the City of London continue as registering authorities for planning charges.

It should be noted that under the Town and Country Planning Acts, 1944 and 1947 (Registration of Orders and Lists of Buildings) Rules, 1948 (summarised, *ante*, p. 242), compulsory purchase orders and declaratory orders registrable by virtue of s. 17 of the Act of 1944, and compulsory purchase orders containing a direction registrable by virtue of s. 39 of the Act are registrable under Part VI of the Register. Lists of buildings of special architectural or historic interest registrable by virtue of s. 30 of the Act of 1947 are to be registered in a new part of the Register to be known as Part X.

Town and Country Planning (Erection of Industrial Buildings) Regulations, 1948

(SI 1948, No. 1309)

[SUMMARISED]

THESE Regulations are made under s. 14 (4) of the Town and Country Planning Act, 1947, and came into operation on July 1, 1948. The effect of the Regulations is that no application to a local planning authority for permission to develope land by the erection thereon of an industrial building of *any* class having an aggregate floor space of 5,000 square feet or more is to have effect unless it is certified by the Board of Trade that the development in question can be carried out with the proper distribution of industry and a copy of the certificate is furnished to the local planning authority together with the application.

Stopping Up of Highways (Concurrent Proceedings) Regulations, 1948

(SI 1948, No. 1348)

[SUMMARISED]

THESE Regulations are made under s. 49 (5) of the Town and

Country Planning Act, 1945, and came into operation on July 1, 1948.

S. 49 of the Act empowers the Minister of Transport for development purposes by order to authorise the stopping up or diversion of any highway and the provision or improvement of any other highway. The section also enables the Minister or a local highway authority to be authorised to acquire land for the purposes of such an order. These Regulations make provision for enabling the proceedings relating to the compulsory acquisition of the land to be taken concurrently with the proceedings required to be taken for the purpose of the order under s. 49.

Town and Country Planning (General) Regulations, 1948

(SI 1948, No. 1380)

Made	*June* 24, 1948
Laid before Parliament	*June* 24, 1948
Coming into Operation	*July* 1, 1948

The Minister of Town and Country Planning, in exercise of the powers conferred on him by sections 9, 19, 20, 22, 24, 27, 30, 33, 45, 79, 84, 105, 110 and 111, and paragraph 13 of the 10th Schedule to the Town and Country Planning Act, 1947, and by section 23 of the Town and Country Planning Act, 1944 as amended by that Act and of all other powers enabling him in that behalf hereby makes the following regulations:—

Citation and Commencement

1. These regulations may be cited as the Town and Country Planning (General) Regulations, 1948 and shall come into force on the appointed day.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires, the following expressions have the meanings respectively assigned to them, namely :—

"the Act" means the Town and Country Planning Act, 1947;

"the appointed day" means the day appointed for the coming into force of the Act.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Notices under section 9 of the Act

3.—(1) A notice under subsection (1) of section 9 of the Act (which relates to the right of owners of land designated by a development plan as subject to compulsory acquisition to require their interests to be acquired) shall be in writing specifying the interest to be acquired and shall be served on the local planning authority by delivering it at the offices of the authority addressed to the Clerk thereof, or by sending it by pre-paid post addressed as aforesaid.

(2) Any such notice as is mentioned in paragraph (1) of this regulation may be served at any time after the expiration of eight years in the case of agricultural land within the meaning of the Rating and Valuation (Apportionment) Act, 1928, or of twelve years in any other case, from the date on which the plan, or the amendment of the plan, by virtue of which the land was first so designated, came into operation.

Claims for compensation and purchase notices[1]

4.—(1) A claim for compensation made to a local planning authority under any of the following sections of the Act, namely sections 20, 22, 27 and 79, or a purchase notice served on the council of a county borough or a county district under section 19 of the Act or under that section as modified by section 22 or section 27 thereof shall be in writing and shall be served on that authority or council by delivering it at the offices of the authority or council addressed to the Clerk thereof or by sending it by pre-paid post addressed as aforesaid.

(2) The time within which any such claim or notice as is mentioned in paragraph (1) of this regulation shall be served shall be a period of six months from the date of the direction, order or decision in respect of which such claim or notice is made or given:

Provided that such period may be extended by the Minister in any particular case.

Notices etc. to occupiers and persons having an interest in premises

5. The manner in which a notice or document such as is referred to in subsection (2) of section 105 of the Act shall be

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[1] In Circular No. 51, dated June 28, 1948, the Ministry state that a series of model forms of claims for compensation and purchase notices will be issued.

marked in order that it shall be deemed to be duly served under head (*b*) of that subsection shall be by inscribing clearly and legibly upon the notice or document and upon the envelope containing it, the words "Important—This Communication affects your property".

Application of enforcement provisions of the Act to works in contravention of section 30 (6)

6. The following exceptions and modifications shall be made in subsections (3) to (5) of section 23 and section 24 of the Act in their application to a notice served under subsection (8) of section 30 of the Act, namely:—

(*a*) in paragraph (*a*) of the proviso to subsection (3) of section 23 for the words "on the land of any building or works, or for the continuance of any use of the land, to which the enforcement notice relates", there shall be substituted the words "of the works affected by the notice";

(*b*) for heads (*a*) and (*b*) of subsection (4) of section 23 there shall be substituted the following heads:—

> "(*a*) if satisfied that no works have been carried out in contravention of subsection (6) of section 30, or that the works have been carried out before effect has been given to the requirements of subsections (3) and (4) of section 30 of this Act so far as they relate to such person, shall quash the notice to which the appeal relates;
>
> (*b*) if not so satisfied but satisfied that the requirements of the notice exceed what is necessary for restoring the building to its former state, shall vary the notice accordingly;"

(*c*) in subsection (2) of section 24 the words "served under the last foregoing section in respect of any development" shall be omitted, and for the words "the development was carried out" there shall be substituted "the works were carried out";

(*d*) subsections (3) and (4) of section 24 shall be omitted;

(*e*) in subsection (5) of section 24, for the words "an enforcement notice under the last foregoing section", there shall be substituted the words "a notice under subsection (8) of section 30 of this Act".

Notices under section 33 of the Act

7.—(1) A notice under subsection (1) of section 33 of the

Act (which relates to the abatement or injury caused by the condition of any garden, vacant site or other open land) shall be served in any manner provided for the service of such a notice by section 105 of the Act and regulation 5 of these regulations.

(2) The following exceptions and modifications shall be made in subsections (3) to (5) of section 23 and section 24 of the Act in their application to any such notice as is referred to in paragraph (1) of this regulation, namely :—

(*a*) in subsection (3) of section 23, paragraph (*a*) of the proviso shall be omitted;

(*b*) for heads (*a*) and (*b*) of subsection (4) of section 23, there shall be substituted the following heads :—

> " (*a*) if satisfied that the condition of the land to which the notice relates is such as results in the ordinary course of events from operations or a use for which permission was granted under this Part of this Act, shall quash the notice to which the appeal relates;
>
> (*b*) if not so satisfied, but satisfied that the requirements of the notice exceed what is necessary for abating the injury, shall vary the notice accordingly; "

(*c*) in the proviso to subsection (4) of section 23, the words " without prejudice to the provisions of paragraph (*a*) of the proviso to subsection (3) of this section " shall be omitted;

(*d*) in subsection (2) of section 24 the words " served under the last foregoing section in respect of any development " shall be omitted, and for the words " the development was carried out ", there shall be substituted the words " the condition of the land was caused ";

(*e*) in subsection (3) of section 24 for the words from the beginning of the subsection up to and including " these operations ", there shall be substituted the words " Where any steps specified in the notice for abating the injury have not been taken within the period therein specified, then if any person on whom such notice has been served causes or permits the injury to continue after the expiration of that period ", for the word " fifty " there shall be substituted the word " ten ", for the word " use " the word "injury", and for the word "twenty" the word "two";

(*f*) subsection (4) of section 24 shall be omitted;

(*g*) in subsection (5) of section 24 for the words "an enforcement notice under the last foregoing section" there shall be substituted the words "a notice under section 33 of this Act".

Application of Public Health Act, 1936, *to enforcement notices*

8. The provisions of sections 276, 289, 292 and 294 of the Public Health Act, 1936, shall apply in relation to steps required to be taken by an enforcement notice under section 24 or by a notice under subsection (8) of section 30 or under section 33 of the Act as if for references to a local authority or a council there were substituted references to a local planning authority, for references (in whatever form) to the execution of works under the said Act there were substituted references to the taking of steps required to be taken under such a notice, and for the reference in section 294 to "expenses under this Act" there were substituted a reference to expenses incurred in the taking of such steps as aforesaid.

Prescribed period under section 84

9. For the purpose of subsection (3) of section 84 of the Act (which provides that where land has since the appointed day ceased to be operational land of statutory undertakers, no development charge will be payable in respect of its use for the purpose prevailing generally in the use of contiguous or adjacent land, or in respect of any operations necessary for making that use, if the use is instituted or the operations are carried out within such period after the cessation as may be prescribed in these regulations) the prescribed period shall be a period of five years.

Disputes as to prevailing use

10.—(1) An application under section 110 of the Act for the reference of a dispute arising in relation to any land, as to what is the use which prevails generally in the case of contiguous or adjacent land, shall be made to the Central Land Board within twenty-eight days from the date on which a notice that a dispute arises is served by one of the parties concerned on the other party or parties.

(2) Any such application shall be sent by post or delivered to any office of the Central Land Board, and a copy of such application shall be sent to the other party to the dispute, unless such party is the Central Land Board.

(3) An appeal to the Minister from a determination of the Central Land Board in any such dispute as aforesaid shall be in writing giving the Board's reference number, if known, shall state the grounds of the appeal, and shall be sent to the Minister within twenty-eight days from the date of such determination; and the appellant shall also send a copy of such appeal to the other party or parties to the dispute.

Concurrent procedure under section 45 (6) for development plans and compulsory purchase orders

11. Where notice has been given in the London Gazette of the submission to the Minister of a development plan, or of proposals for the amendment of such a plan, or of any proposal by the Minister to make or amend such a plan, and the plan or proposals as submitted or the proposal of the Minister designates any land as subject to compulsory acquisition, any proceedings required by the Acquisition of Land (Authorisation Procedure) Act, 1946, to be taken for the purposes of an order or authorisation for the compulsory acquisition of such land or any part thereof under subsection (1) of section 37 or subsection (1) of section 38 of the Act may be taken concurrently with any proceedings required by or under the Act to be taken in connection with the approval, making or amendment of such development plan:

Provided that no such order or authorisation shall be confirmed, made or given by a Minister before such plan or amendment has become operative.

Concurrent procedure for acquisition of land and extinguishment of rights of way

12.—(1) Where under section 38 of the Act a compulsory purchase order for the acquisition of any land has been made by a local authority and submitted to the Minister in accordance with the provisions of the Acquisition of Land (Authorisation Procedure) Act, 1946, or where any land has been acquired by a local authority under section 40 of the Act, the succeeding provisions of this regulation shall apply in relation to the extinguishment of public rights of way over such land and the acquisition of land for the provision of alternative rights of way.

(2) The Minister may on or after any such submission or acquisition publish in accordance with the provisions of paragraph (1) of the Sixth Schedule to the Act, as applied by section 23 of the Town and Country Planning Act, 1944, notice of an order proposed to be made under subsection (1) of section 23 of that Act, relating to the extinguishment of any such right of way.

(3) On or after the publication of any such notice, the Minister of Transport may prepare in draft or a local highway authority may make a compulsory purchase order under subsection (3) of the said section 23, for the acquisition of land for providing an alternative right of way.

(4) Any other proceedings required to be taken in connection with the making of an order under subsection (1) of section 23 of the Town and Country Planning Act, 1944, may be taken concurrently with the proceedings required to be taken in connection with such order as is mentioned in paragraph (1) of this regulation, and any other proceedings for the making or confirmation of such compulsory purchase order as is referred to in paragraph (3) of this regulation may be taken concurrently with either or both of the said proceedings:

Provided that:—

(*a*) no such order under the said subsection (1) of section 23 shall be made until the land over which the right of way subsists has been acquired by the local authority; and

(*b*) no such compulsory purchase order as is referred to in paragraph (3) of this regulation shall be made by the Minister of Transport or confirmed, until the original right of way has been extinguished by an order under the said subsection (1) of section 23.

Transitory provisions as to the Restriction of Ribbon Development Acts.

13.—(1) Any application to a highway authority under the Restriction of Ribbon Development Act, 1935, for any consent which that authority have power to give under section 1 or section 2 of that Act, being an application which has not been determined by that authority before the appointed day, shall be treated for the purposes of the Act as an application made to the local planning authority for planning permission, and shall be treated as having been so made on the appointed day.

Provided that where before the appointed day the highway authority had consulted with the Minister of Transport in accordance with the provisions of subsection (3) of section 4 of the Trunk Roads Act, 1936, the application shall not, provided any requirements of the Minister of Transport under that subsection are given effect to by the local planning authority, be treated as an application for development affecting trunk roads for the purposes of the Town and Country Planning (General Development) Order, 1948.[1]

(2) Any decision of a highway authority on an application for such a consent under the Restriction of Ribbon Development Act, 1935, shall, unless the applicant has appealed against that decision under section 7 of that Act before the appointed day, be treated for the purpose of section 16 of the Act, as the decision of a local planning authority on an application for planning permission.

(3) Any appeal to the Minister of Transport under the said section 7 which is pending on the appointed day shall be treated as an appeal to the Minister under section 16 of the Act:

Provided that where under the said section 7 any such local inquiry as is required by that section has been held before the appointed day, the proviso to subsection (2) of section 15 of the Act, shall not apply in relation to any such appeal.

(4) Any such application as is referred to in paragraph (1) of this regulation shall be sent by the highway authority to the local planning authority with any plans, drawings or other documents relating thereto and the highway authority shall notify the applicant accordingly.

Town and Country Planning (Tree Preservation Order) Regulations, 1948 [2]

(SI 1948, No. 1436)

Made	*June* 29, 1948
Laid before Parliament	*June* 30, 1948
Coming into Operation	*July* 1, 1948

The Minister of Town and Country Planning in exercise of the powers conferred on him by sections 28 and 111 of the

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[1] In Circular No. 51, dated June 28, 1948, the Ministry state that an application under the Act of 1935 becomes an application affecting trunk roads for the purpose of this Order in cases where the consultation between the Restriction of Ribbon Development Act Authority and the Minister of Transport has not been completed before July 1, 1948, *i.e.*, where the Minister has not by that date indicated to the Authority the result of his consideration of the application.

[2] In Circular No. 52, the Ministry state that a memorandum dealing with policy and procedural aspects of tree preservation orders which will

Town and Country Planning Act, 1947, and of all other powers enabling him in that behalf, hereby makes the following regulations:—

1. These Regulations may be cited as the Town and Country Planning (Tree Preservation Order) Regulations, 1948, and shall come into force on the appointed day.

2.—(1) In these regulations unless the context otherwise requires:

"the Act" means the Town and Country Planning Act, 1947;

"the appointed day" means the day appointed for the coming into force of the Act;

"order" means a tree preservation order made under section 28 of the Act, and in regulations 4, 6 and 7 includes an order amending or revoking such an order;

"notice by advertisement" in relation to an order means a notice published in a newspaper circulating in the locality in which the subject matter of the order is situate;

"the Minister" means the Minister of Town and Country Planning.

(2) The Interpretation Act, 1889 shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

3.—(1) Subject to the provisions of paragraph (2) of this regulation, an order made by a local planning authority shall be in such form as the local planning authority may determine.

(2) Every order shall include a map showing the position of the trees, groups of trees or woodlands, which are the subject matter of the order. Such map shall be to a scale of 25 inches to 1 mile (or 1/2,500) where the order is for trees or groups of trees or affects only small areas of woodlands. For orders affecting large areas of woodlands, such map shall be to a scale of 6 inches to 1 mile and in respect of any woodlands which are too small to be shown adequately thereon, or in respect of which a clearer definition of boundaries is necessary, additional maps to a scale of 25 inches to 1 mile (or 1/2,500) shall form part of the order.

4. A local planning authority shall, on making an order—

(*a*) submit to the Minister:

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include a model order will be issued. Local planning authorities who consider that a tree preservation order is a matter of urgency are asked to get into touch with the Ministry. Interim preservation orders submitted under the Town and Country Planning (Interim Development) Act, 1943, not confirmed before July 1, 1948, should be made again.

(i) the sealed order in duplicate;

(ii) the following number of unsealed copies thereof, namely, in the case of an order affecting woodlands, five copies, in the case of an order affecting only trees or groups of trees, four copies, and in the case of an order which merely amends or revokes an existing order, one copy; and

(iii) a statement of their reasons for making the order;

(*b*) give notice by advertisement of the submission of the order to the Minister, and include in the notice a statement that a certified copy of the order will be open for inspection at a specified place or places and between specified hours, and that objections or representations with reference to the order may be made in writing to the Minister in accordance with these regulations within 28 days from the date of publication of the advertisement;

(*c*) serve on the owners and occupiers of the land affected by the order and on any other person known to them, at the time of giving such notice as aforesaid, to be entitled to fell any trees, groups of trees or woodlands specified in the order, or to work by surface working any minerals in the land affected by the order, a copy of the order (either with or without any map forming part thereof) together with a notice stating that the order has been made and submitted to the Minister for confirmation, naming the place or places where and the hours within which a certified copy of the order may be inspected, and stating that objections or representations with reference thereto may be made in writing to the Minister in accordance with these regulations within 28 days from the date of service of the notice; and

(*d*) furnish to the Minister copies of any advertisement published in accordance with the provisions of this regulation, and a certificate that the provisions of sub-paragraphs (*b*) and (*c*) of this regulation have been complied with.

5.—(1) Every objection or representation shall specify the particular trees, groups of trees or woodlands in respect of which it is made and shall state the grounds thereof.

(2) An objection shall not be duly made unless it is received within the period allowed under the last foregoing regulation and complies with the provisions of paragraph (1) of this regulation.

6. The Minister shall, before deciding whether to confirm the order, take into consideration any objections and representations duly made in accordance with the foregoing regulation, and, if a local inquiry is held, the report of such inquiry.

7. The local planning authority shall, on receipt of the Minister's decision on the order—

(*a*) inform all persons on whom notices have been served under sub-paragraph (*c*) of regulation 4 of these regulations of the Minister's decision, and in addition, where the order is confirmed or confirmed subject to modifications, serve a copy of the order on every such person; and

(*b*) (except where the order is confirmed provisionally under the proviso to sub-section (4) of section 28 of the Act) give notice by advertisement of the Minister's decision, and where the order is confirmed with or without modifications, state in such notice the place where and the hours within which a copy of the order may be inspected.

Town and Country Planning Minerals Direction No. 1, 1948

(SI 1948, No. 1437)

Made *June* 29, 1948
Coming into Operation *July* 1, 1948

The Minister of Town and Country Planning (hereinafter called "the Minister") in exercise of the powers conferred upon him by paragraph (6) of Article 5 of the Town and Country Planning (General Development) Order, 1948 and of all other powers enabling him in that behalf hereby gives the following direction :—

1. Any local planning authority to whom an application has been made for permission under the Town and Country Planning Act, 1947, to develop land by the winning and working of any of the minerals specified in the Schedule hereto shall furnish to the Minister—

(*a*) on receipt of such application, a copy thereof and of any plans or maps submitted therewith, and

(*b*) where a decision in respect of such application has been given by them, particulars of such decision and of the date thereof.

2. This Direction may be cited as the Town and Country Planning Minerals Direction No. 1, 1948, and shall come into force on the first day of July, 1948.

SCHEDULE

Fullers Earth.
Diatomite.
China Clay.
China Stone.
Felspar.
Ball Clay.
Talc.
Pyrophyllite.

Moulding Sands.
Silica Sands.
Rock Quartzite.

Bauxite.
Tungsten Ore.
Lead Ore.
Zinc Ore.
Tin Ore.
Manganese Ore.
Fluorspar.

Graphite.
Lignite.
Oil Shale.

Anhydrite.
Gypsum.
Phosphate Rock.
Mica.
Celestine.

Town and Country Planning Delegation (London) Regulations, 1948

(SI 1948, No. 1459)

Made	*June* 30, 1948
Laid before Parliament	*June* 30, 1948
Coming into Operation	*July* 1, 1948

The Minister of Town and Country Planning in exercise of the powers conferred upon him by Section 114 of the Town and Country Planning Act, 1947 and of all other powers enabling him in that behalf hereby makes the following regulations :—

1. These regulations may be cited as the Town and Country Planning Delegation (London) Regulations, 1948, and shall come into force on the first day of July, 1948.

2.—(1) In these regulations :

"the Common Council" means the Common Council of the City of London;

"the Act" means the Town and Country Planning Act, 1947.

(2) The Interpretation Act, 1889 shall apply to the

interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

3.—(1) The London Couny Council shall delegate to the Common Council their functions in relation to applications for planning permission, in respect of land in the City of London, under sections 14, 16, 17, 18, 23 and 24 of the Act.

(2) Before dealing with any application for permission, the Common Council shall obtain the agreement of the London County Council to the manner in which they propose to deal with it, and any application which in the opinion of the said Councils is of exceptional difficulty shall be referred to the Minister in accordance with the Town and Country Planning (City of London Applications) Direction 1948.[1]

4. Any document by which any function delegated to the Common Council under Regulation 3 of these regulations is exercised shall state that such function is exercised on behalf of the London County Council.

5. The London County Council may by agreement with the Common Council transfer to the Common Council any liability to pay compensation under Part III of the Act in respect of anything done by the Common Council in the exercise of functions delegated to them in accordance with these regulations.

6. No document issued by the Common Council under these regulations shall be invalid by reason only that the requirements of these regulations have not been complied with, and no person acting in pursuance of any such document shall be concerned to see that such requirements have been observed.

Town and Country Planning (City of London Applications) Direction, 1948

(SI 1948, No. 1460)

Made *June* 30, 1948
Coming into Operation *July* 1, 1948

[Recites SI 1948, No. 1459, above]

Now the Minister of Town and Country Planning in exercise of the powers conferred on him by s. 15 of the said Act hereby gives the following direction :—

1. Any application for permission to develop land in the City of London which in the opinion of the said Councils is of

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[1] SI 1948, No. 1460, below.

exceptional difficulty shall be referred by the London County Council to the Minister to be dealt with by him.

2. This direction may be cited as the Town and Country Planning (City of London Applications) Direction, 1948, shall come into force on the first day of July, 1948, and may be varied by a subsequent direction.

Town and Country Planning (Local Authorities' Land: Exceptions to Section 82) Regulations, 1948

(SI 1948, No. 1461)

[See *post*, p. 334]

Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Regulations, 1948 [1]

(SI 1948, No. 1520)

Made	*May* 25, 1948
Laid before Parliament	*May* 25, 1948
Coming into Operation	*July* 1, 1948

THE Minister of Town and Country Planning in exercise of the powers conferred on him by subsection (8) of s. 75 of the Town and Country Planning Act, 1947, and of all other powers enabling him in that behalf hereby makes the following Regulations :—

1. These Regulations shall come into force on the appointed day, and may be cited as the Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Regulations, 1948.

2.—(1) In these Regulations, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say :—

"the Act" means the Town and Country Planning Act, 1947;

"the appointed day" means the day appointed for the coming into force of the Act;

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

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[1] These Regulations were approved by Resolution of the House of Commons, June 28, 1948, and by the House of Lords, June 30, 1948, in accordance with s. 75 (8) of the Town and Country Planning Act, 1947.

3. For the purpose of applying the provisions of subsections (1) to (7) of s. 75 of the Act to works on land carried out or uses of land begun at any time before the appointed day in contravention of any restriction in force under s. 1 or s. 2 of the Restriction of Ribbon Development Act, 1935, subsection (1) and (2) of s. 75 of the Act shall be adapted and modified so as to have effect as follows [2] :—

"(1) Where any works on land existing at the appointed day were carried out or any use to which land is put on that day was begun in contravention of previous planning control **or any building law** then, subject to the provisions of this Section, the provisions of Part III of this Act with respect to enforcement notices shall apply in relation thereto as they apply in relation to development carried out after the appointed day without the grant of permission in that behalf under the said Part III :

Provided that an enforcement notice shall not be served by virtue of the provisions of this Section in respect of any works or use (not being works or a use carried out or begun during the war period as defined by the Building Restrictions (War-Time Contraventions) Act, 1946) at any time after three years from the appointed day.

In this Section the expression "building law" means any restriction in force before the appointed day by virtue of Section 1 or Section 2 of the Restriction of Ribbon Development Act, 1935.

(2) Where any such works as aforesaid were carried out, or any such use as aforesaid was begun, during the war period as defined by the Building Restrictions (War-Time Contraventions) Act, 1946, then—

(*a*) if by virtue of the provisions of that Act, **or of that Act as amended by any regulations made by the Minister under subsection (8) of this Section,** or of any determination effected thereunder (whether before or after the appointed day), the works or use are deemed to comply with planning control within the meaning of that Act **or with any building law,** the provisions of this Section shall not apply, or, as the case may be, shall cease to apply to those works or that use; and

(*b*) if it has been determined under that Act **or under that Act amended as aforesaid** (whether before or after the

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[2] Words printed in heavy type are words inserted by the Regulation.

> appointed day) that the works or use shall not be deemed to comply with planning control within the meaning of that Act **or with any building law**, subsection (3) of Section twenty-three of this Act shall have effect, in relation to any enforcement notice served in respect of the works or use, by virtue of the provisions of this Section, as if the proviso to that subsection were omitted ".

and subsections (3) to (7) of the said Section 75 shall have effect accordingly.

4. The Building Restrictions (War-Time Contraventions) Act, 1946, shall have effect as regards any restriction in force before the appointed day by virtue of Section 1 or Section 2 of the Restriction of Ribbon Development Act, 1935, as though :—

(*a*) any reference therein to a building law included a reference to any such restriction, and any reference to the authority responsible for enforcing such a law were, in relation to that restriction, a reference to the authority empowered by virtue of Section 75 of the Act as applied by Regulation 3 of these Regulations to serve an enforcement notice under Part III of the Act;

(*b*) any reference therein to a failure to comply or non-compliance with a building law included a reference to a failure to comply or non-compliance, before the appointed day, with any such restriction, any reference to compliance with such a law being construed accordingly;

(*c*) any reference in subsections (10) and (11) of Section 2 thereof to an authority responsible for enforcing planning control included a reference to an authority empowered by virtue of Section 75 of the Act as applied by Regulation 3 of these Regulations to serve an enforcement notice under Part III of the Act.

Town and Country Planning (Minerals) Regulations, 1948

(SI 1948, No. 1521)

[SUMMARISED]

THESE Regulations are made under ss. 81 (1) and 111 of the Town and Country Planning Act, 1947, and were approved by Resolution of the House of Commons, June 28, 1948, and by the House of Lords, June 30, 1948, in accordance with s. 81 (5) of the Act. (See hereon, *post*, p. 336.) They came into operation on July 1, 1948.

The Regulations prescribe the adaptations to which the Act is to be subject in relation to development consisting of the winning and working of minerals (other than for agricultural purposes and other than coal and other minerals vested in the National Coal Board) : reg. 2 and s. 81 (6) of the Act.

The Regulations prescribe the limited extent to which "use" in relation to land includes the use of land by the carrying out of mining operations (reg. 3 (1)); certain modifications of s. 22 (1) (compensation on revocation or modification of planning permission) (reg. 3 (2)); and the time within which an enforcement notice in respect of a working of minerals in breach of a planning condition may be served (reg. 3 (3)).

Under reg. 4 (1), when on July 1, 1948, a mineral undertaker has any interest in land which entitles him (whether subject to the consent of another person or not) to win and work the minerals therein (or has a right to acquire such an interest), no development charge is payable in respect of the winning and working of minerals in that land during the period of three years from the appointed day.

Under reg. 4 (2) the restricted and unrestricted values of an interest in any such land are to be calculated for the purposes of a claim on the global sum of £300 millions as if any operations carried out for the winning and working of minerals therein during such three years had been carried out before July 1, 1948. Provided that it is not to be assumed that any other operations would have been advanced thereby, and in all other respects the value is to be calculated as if this regulation had not been made.

Under reg. 4 (3), no claim for compensation on compulsory acquisition of land or on the revocation or modification of any permission to develop land is to be increased by reason of the provisions of this regulation.

Reg. 5 deals with the assessment of compensation under s. 51 of the Act for the compulsory acquisition of an interest in any land in respect of which a planning permission to win and work minerals is in force at the date of the notice to treat.

Reg. 6 enables a claim to be made on the global sum in respect of an interest in land under a mining lease.

Reg. 7 deals with the effect of the presence of mining buildings, plant and machinery on the calculation of development values.

Under reg. 8, the Central Land Board may base a development charge on the amount of minerals got from time to time and may require mineral undertakers to furnish the necessary returns and information.

Under reg. 9, royalties payable under leases or under working facilities orders may be adjusted with reference to development charges which become payable. The adjustment is to be made by a tribunal constituted in accordance with the Schedule to the Regulations.

Reg. 10 modifies s. 79 of the Act (compensation for abortive expenditure on refusal of permission for certain development authorised before July 1, 1948).

Town and Country Planning (Modification of Mines Act) Regulations, 1948

(SI 1948, No. 1522)

[SUMMARISED]

THESE Regulations are made under s. 81 (4) of the Town and Country Planning Act, 1947 and come into operation on July 1, 1948.

The Regulations provide for the modification of the Mines (Working Facilities and Support) Act, 1923 (13 & 14 Geo. 5 c. 20), where a development plan provides that any land is to be used for the purpose of securing the winning and working of any minerals comprised therein. The Regulations do not apply to the working of minerals on agricultural land for agricultural purposes or the working of coal and other minerals vested in the National Coal Board. (See s. 81 (6) of the Act.)

Town and Country Planning (Control of Advertisements) Regulations, 1948

(SI 1948, No. 1613)

[SUMMARISED]

These Regulations are made under s. 31 of the Town and Country Planning Act, 1947, and came into operation on August 1, 1948, from which date no new advertisements may be displayed without consent, either given on application to the local planning authority or by the Regulations themselves (reg. 5).

The Regulations apply to the display on land in England and Wales of all advertisements except those of certain limited descriptions. The main exceptions are advertisements displayed on enclosed land and not readily visible outside that land, advertisements within buildings other than certain illuminated advertisements, advertisements on vehicles and advertisements which are on railway land and which can be seen only from railway stations (reg. 3).

All advertisements whether in existence on August 1, 1948, or whether displayed for the first time after that date, are subject to a code of standard conditions which provides that they must be maintained in a clean, tidy and safe manner. This code does not apply to existing advertisements until December 1, 1948 (reg. 6).

Existing advertisements will, subject as above stated, be entitled to a period of grace, in the case of advertisements displayed or sites used on January 7, 1947, until August 1, 1951, and in other cases August 1, 1948 (reg. 7). After the expiry of the period of grace existing advertisements will be subject to challenge by the local planning authority (reg. 8).

New advertisements of certain classes may be displayed without prior application for permission unless and until they are challenged. These classes comprise (1) functional advertisements of local authorities, statutory undertakers and public transport undertakers, e.g., " Bus Stop ", " Road Up ", etc.; (2) advertisements relating to the land on which they are displayed, such as the name of a house, a doctor's name plate, a notice outside a church; (3) temporary advertisements in connection with the land on which they are displayed referring to (a) the sale or letting of land, (b) auction sales or (c) building or contracting work; and temporary advertisements, wherever displayed, relating to local events or activities of a non-commercial character promoted by local organisations of various kinds; (4) advertisements of business premises relating specifically to the business carried on, the goods sold or services provided on these premises (reg. 12).

Orders may be made by local planning authorities, with the approval of the Minister, defining as " areas of special control " rural areas or town areas which are considered to merit protection on amenity grounds (reg. 10). In such areas there will be no general commercial advertisements (*i.e.*, no hoardings) after the expiry of a period of grace and advertisements which do not require prior application will be treated more strictly as regards the advertising space permissible and the height of the lettering.

The Regulations also deal with illuminated advertisements (reg. 27), statutory and official notices, election advertisements, traffic signs, local planning authority advertisements and advertisements relating to fairs and circuses (regs. 14, 25, 26), flyposting, *i.e.*, the display of advertisements on land without the permission of the owner of that land (regs. 5 (4), 9, 23), the method of application for permission (reg. 15), procedure for giving decisions (reg. 19), appeals (reg. 20), fines for contravention (reg. 9) and enforcement procedure (reg. 23).

Town and Country Planning (Local Authorities' Land: Exceptions to Section 82) Regulations, 1948

(SI 1948, No. 1461)

Made	*June* 30, 1948
Laid before Parliament	*June* 30, 1948
Coming into Operation	*July* 1, 1948

THE Minister of Town and Country Planning in exercise of the powers conferred on him by section 82 (1) (*c*) of the Town and Country Planning Act, 1947, and all other powers enabling him in that behalf, hereby makes the following regulations:—

1.—(1) These regulations may be cited as the Town and Country Planning (Local Authorities' Land: Exceptions to Section 82) Regulations, 1948, and shall come into force on the appointed day.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(3) In these regulations—

(*a*) "the Act" means the Town and Country Planning Act, 1947; and "the appointed day" means the day appointed for the coming into force of the Act;

(*b*) "land held for commercial purposes" means land held for the purpose of any activity (including restaurants, theatres, concert-halls, holiday camps and airfields) with the intention of making profit therefrom, whether that intention is the main object of that activity or not.

2. The following classes of land shall be excepted from the provisions of section 82 of the Act:—

(1) Land held for commercial purposes;

(2) Land held solely or mainly for the revenue derived therefrom;

(3) Land held for industrial estates;

(4) Land held by local highway authorities for working and winning minerals for highway purposes;

(5) Land acquired by a local authority—

(*a*) before the appointed day in pursuance of a notice to treat served after the passing of the Act, or in pursuance of a contract (not being a contract which excludes the application of subsections (2) and (3) of section 91 of the Act) made after the passing of the Act;

(*b*) on or after the appointed day in pursuance of a notice to treat served or a contract made after the passing of the Act;

and not for the time being developed by that authority.

Provided that classes (1) to (4) shall not include the following land:—

(i) land acquired by a local authority—

(*a*) in pursuance of a notice to treat served, or a contract made, before the passing of the Act; or

(*b*) before the appointed day in pursuance of a contract made after the passing of the Act, being a contract which excludes the application of subsections (2) and (3) of section 91 of the Act;

under an express statutory power to acquire land for the benefit of the area of the local authority, or for development or recoupment or other general purposes not more particularly identified (including land acquired for the improvement or development of frontages under section 83 of the Public Health Act, 1925) which is for the time being not developed by that authority or appropriated to any more particular purpose;

(ii) land held for the purpose of any enactment relating to housing;

(iii) land held for the purpose of—

a gymnasium, public library, museum or art gallery; a cemetery, burial ground, crematorium or mortuary; the burial of carcases.

Book Review

The Principles of Planning Law. By J. Charlesworth. (2nd ed. Stevens. 1948. xvi and 159 and (Index) 5 pp. 12s. 6d.)

In the days before the 1947 Act, *Charlesworth* stood out as offering at a reasonable price a short but comprehensive survey of the whole field of Planning Law. This new edition does the same for the law as it stands today. There are errors of detail in it, which the practitioner will need to watch for, but they should not matter to the ordinary user. It is perhaps a pity that the book should have gone to press before the recent spate of Statutory Instruments, but subscribers to this Journal will have those available anyway. Printing and binding are satisfactory. Altogether a most useful little book.

T. A. BLANCO WHITE.

Parliamentary Intelligence

The Town and Country Planning (Minerals) Regulations, 1948, the Town and Country Planning (Modification of Mines) Regulations, 1948, and the Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Regulations, 1948, were discussed in the House of Commons on June 28, 1948 (H. C. Debates vol. 452, col. 1931) and in the House of Lords on June 30, 1948 (H. L. Debates vol. 157, col. 122).

With regard to the Minerals Regulations, the following points may be noted :

1. The Regulations are to be regarded as an interim provision. Discussions are proceeding between the Federation of British Industries, the Central Landowners' Association and the Central Land Board, with a view to framing regulations which will settle the principle upon which development charges are to be assessed. Local authorities will not be represented in these discussions.

2. In respect of leases with regard to which it may be necessary to fix a development charge, not only the mineral owner but also the royalty owner will be entitled to make representations to the Central Land Board as to the proposed development charge, and will have a right to appear (by

council if so desired) before the tribunal by whom any variation of the lease is considered.

3. If the land (or so much thereof as interferes with working) is acquired during the three years' moratorium granted by the Regulations the mineral owner will have a claim on the global fund.

4. Under s. 81 (3) of the Act, it seems that it would be *ultra vires* to refer specifically in the Regulations to the question of the restoration of the land as a factor in fixing development charges. The Central Land Board will, however, do their best, under the Act and the Regulations, to take into account the cost of restoration.

Notes of Cases

The case of *Swindon Corporation* v. *Pearce and Pugh*, [1948] W. N. 233; [1948] 2 All E. R. 119, illustrates a principle that by now is probably familiar to the readers of this Journal. In the words of Lord Goddard, L.C.J., " where matters are left by Parliament to the discretion and judgment of a local authority the Courts ought not, and, indeed, cannot, interfere to overrule or vary what they see fit to do ". In this case, on an appeal against an enforcement notice served under s. 5 of the Town and Country Planning (Interim Development) Act, 1943, the Court of summary jurisdiction which heard the appeal decided that the local planning authority had been wrong in holding that the proposed use of the ground would be injurious to the amenities of the neighbourhood, and had therefore been wrong in refusing permission for that use; and, on this ground, the Court quashed the Notice. The Divisional Court held that the justices could not go into the merits of the development concerned. The local planning authority had a discretion to grant or refuse permission for the development, and they had refused it, and that concluded the matter.

The case, however, illustrates another point, too. The position was obscure enough, on the wording of the 1943 Act, for both the Court of summary jurisdiction and (on appeal) quarter sessions to have been misled. On the 1947 Act, the respondents' case would have been hardly arguable in any Court. In the same way, the wrong decisions of the High

Court in the Plymouth cases[1] were partly conduced to by wording of the Town and Country Planning Act, 1944, that the 1947 Act has clarified. Where the 1947 Act breaks new ground, it is in many respects very badly drafted; yet on the whole, it represents a great improvement in clarity over its predecessors. For this we should all be grateful.

T. A. B. W.

The Purchaser's Solicitor

It has been pointed out (*ante*, pp. 104, 105) that in the present sellers' market there is a danger that with regard to the information to be disclosed concerning the use of the property a practice will harden which is unduly favourable to the vendor.

That this fear is well founded is shown by the two examples which are dealt with below.

The National Conditions of Sale

The National Conditions of Sale (14th ed.) deal with the Town and Country Planning Act, 1947, by means of the following clause :—

" The purchaser shall also be deemed to buy with full notice in all respects of the existing use of the property for the purposes of the enactments relating to Town and Country Planning ".

This clause may be said to be drafted in accordance with the view that the effect of the Act of 1947 should be excluded from ordinary conveyancing as far as possible. The same attitude was adopted by many practitioners with regard to the Property Acts of 1925 with results which are not altogether happy.

Since the National Conditions of Sale will be embodied in a large number of contracts, solicitors acting for purchasers should consider the following objections :—

1. The expression " existing use " is ambiguous. Although it is convenient and generally used, it does not occur in the Act of 1947, except in a purely incidental way in the headings to Schedule III. As used in the National Conditions of Sale, it

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[1] *Robinson* v. *Minister of Town and Country Planning* (1947), 176 L. T. 378, reversed, C. A., [1947] K. B. 702; *Phœnix Assurance* v. *Minister*, [1947] L. J. R. 527, [1947] 1 All E. R. 454.

may be questioned whether it refers to the date of the contract or July 1, 1948, or both; cf. clauses 1, 4 and 5, *ante*, pp. 116, 117, and the definition given on p. 116.

2. The vendor will be entitled to refuse to answer any requisition concerning the use on July 1, 1948, or on any other date, and will certainly refuse to permit any reference to that use to be included in the conveyance. The result will be that the purchaser will not get any proper covenant for title on the question of user and he may have no satisfactory evidence for the purposes of his title of the actual use on the appointed day or since. If, for example, he later wishes to mortgage the property and the mortgagee insists on the production of such evidence, the purchaser will be seriously embarrassed.

3. Before completion, the purchaser may discover that the actual use of the property constitutes a breach of the planning control of such a character as seriously to impair the value of the property to him. Or he may discover that the actual use of the property, or the use on July 1, 1948, does not permit him to adapt it for his purposes without obtaining planning permission or paying a development charge or both. The above clause in the National Conditions of Sale might well be held to preclude the purchaser from resisting an action for specific performance of the contract.

The Form of Conveyance

The following communication has been received from a Solicitor:—

> We refer you to the *Journal of Planning Law* dated July, and the form of conveyance suggested on p. 281 of that pamphlet, and have tried in practice to get other solicitors' consent to the necessary clauses being included in contracts so as to enable clauses on the lines of 2, 3 and 4 suggested, being incorporated in the conveyance to a purchaser, but have met with very vigorous opposition to such clauses. The suggestion has been put forward that it was the purchasers' or their advisers' duty to satisfy themselves as a result of inquiries from the local authority or otherwise as to what the exact position was of the property in question under the Town and Country Planning Acts, and on reflection this view seems difficult to combat, and appears one that we will probably use when we are asked to agree to similar clauses.
>
> No doubt the profession in time will hammer out a suitable contract which is as fair as possible to both Vendor and Purchaser, but we should be glad of your views with regard to the above observations.

We venture respectfully to dissent from the conclusion reached by our learned correspondent, though it comes as no surprise to us and, indeed, it was expected. To comment in detail would be to recapitulate the series of articles on dealings with land, but we may, perhaps, offer some points which have not hitherto been emphasised, because, of course, the series of articles is not complete.

(1) We think that it is a fairly safe assumption that the local planning authority will decline to answer the question whether or not there has been any contravention of the Acts on every purchase of land. To do so would place an intolerable burden upon the already overworked planning staff, since it would involve a minute inspection and inquiry in the case of each sale. In our experience planning contraventions come to light by a sidewind, such as a purchaser's insistence on proper proof or possibly obtaining planning permission. What inquiries "otherwise" a purchaser can reasonably be expected to make we do not see. We doubt whether inquiries from neighbours would be profitable or popular.

(2) We could not recommend a mortgagee to lend money on a title taken under the deduction of title and conveyance conducted on exactly the same lines as before the Act. An enforcement notice may reduce the value of the property substantially. Consequently a mortgagee will not only insist upon all possible proof that the actual user is the permitted user, but he will also insist on a mortgage incorporating clauses analogous to the precedent of conveyance referred to by our learned correspondent.

(3) It is no more the duty of the purchaser to ascertain the exact position of the user under the Town and Country Planning Act, 1947, than it is his duty to ascertain that the vendor is seised of the legal estate in fee simple. The vital point is that in our view the effect of the Planning Legislation is to turn the "user" of the property into a matter of title just as much as ownership of the legal estate. It is the duty of the vendor to satisfy the purchaser that he has this title and there is no reason why he should not covenant that he has.

In saying this we are aware that this duty of satisfying the purchaser can be varied by contract and if purchasers accept a lesser burden on the vendor it is for them to take the risk (as where they accept possessory titles to the legal estate), but we would add that we can see no possible reason why a mortgagee should take such a risk.

(4) Our learned correspondent's point about the contract being fair to both parties does not really determine the issue. If the contract provides for the form of conveyance well and good—and we cannot see what is inequitable in the vendor

acknowledging what should be within his knowledge. But if the suggestion is that the matter should be dealt with by contract and excluded from the conveyance, there are two objections. First, it would make the contract as nearly a document of title as a contract could become, since it would be vital, *e.g.*, where a mortgage was involved. Secondly, the contract for most purposes is merged in the conveyance and apart from fraud (always most difficult to prove) the clauses are not likely to help the purchaser when the contravention comes to light. In this connection we might remind subscribers of *Knight Sugar Co.* v. *Alberta Ry.*, [1938] 1 All E. R. 266, where a *contract* excepted " all coal ", but the transfer excepted " all coal and other minerals ", and the Privy Council refused to direct rectification of the transfer or the register so that the right to all minerals remained vested in the transferor. There is no doubt that the essential issue in this problem of conveyancing under the Planning Legislation is not one of contract but of conveyance.

We cannot conclude without comment of a more general character. This and other precedents have been drafted inconveniently close to the passing of the Act and promulgation of Orders in the hope that they represent the new position induced by a change in the *title* of the vendor more vital than any that has occurred for hundreds of years. This change is of such a character that it is not possible to foresee with precision the exact lines of judicial interpretation which will be put upon its effect and we have aimed rather at preventing hardship by reason of failure to provide against contingencies than at reducing the effect of the change to a minimum. We had hoped that adoption of these forms would reduce the possibility of dispute and of embarrassing titles. We emphasise this point from our experience under the 1925 legislation. There was, and perhaps still is, an attempt on the part of some practitioners to ignore the implications of that legislation, such as by abstracting wills (a practice to which the Law Society has only recently had to draw attention), by dealing with undivided shares in such a way as to bring equities on the title, and by bringing into the title matters which should be concealed under the Settled Land Act. Every conveyancing counsel has reason to be grateful for this attitude, since putting right the effects of it represents a high proportion of his work. We had hoped that this bitter experience might not be repeated under this much more drastic legislation.

Our second comment is based on observation of the way in which certain types of legal business have drifted into the hands of other professions. It does not seem to be sufficiently realised that conveyancing is really a form of insurance in which a purchaser is entitled to all reasonable protection. In ninety-nine cases out of a hundred, perhaps in nine hundred and ninety-nine cases out of a thousand, a purchaser has no real need of a conveyance or of investigation of title, and, of course, this applies in a somewhat less degree to a mortgagee. If the purchaser has a written contract signed over a sixpenny stamp and takes possession or receipt of the rents and profits on paying over the purchase money, he will be just as well placed for all practical purposes as if he had a conveyance. The legality of the use of the premises is now of greater concern to him than the legal estate. What is more, if " use " is not to be treated as a matter of title an estate agent will be a far better adviser to a purchaser than a solicitor, since he is better equipped from training and experience to determine the facts on the ground.

Conveyancing prior to July 1, 1948, really depended on the hundredth, or perhaps the thousandth, case in which the vendor really had no proper commercial title to sell or his disorderly title might interfere with subsequent transactions. If the purchaser is to be expected to risk his " title " to the " use ", which is, of course, all important today, there seems little point in his not risking also his title to the legal estate. We think that our precautions may seem excessive to some, but we incline to the view that the chances of an illegal user are at least as great as the chance of a commercially bad title. It is to be regretted that the Act did not make provision for title to use (except for registration of planning applications after the Act), but in the absence of such provision we must do the best we can, and it must clearly fall upon the vendor, who should know, rather than the purchaser, who cannot, to undertake the obligations arising from the question of the legality of the user at the date of sale.

HAROLD POTTER.

Valuation and Management

By W. A. Leach, F.R.I.C.S.

I. Development Rights of Owners (*ante*, p. 38).

II. Effect of Planning on Property Management (*ante*, p. 92).

III. Development Value—Development Charges—Effect on Property Values (*ante*, pp. 181, 263).

IV. **Compensation for Planning Action other than Development.**

V. Valuation for Compulsory Acquisition.

VI. Valuation for Injurious Affection.

IV. Rights of Compensation Arising from Planning Action other than Development

A. REFUSAL OR CONDITIONAL GRANT OF PLANNING PERMISSION

1. As from July 1, 1948, the only developments which may be carried out free of charge are those set out in Groups A and B of Article I (*ante*, pp. 39, 41), together with the completion of certain buildings and the development of ripe building land (Group D) (*ante*, p. 43).

2. The items in Group A are excluded from the meaning of development in s. 12 and there is no question of permission being obtained; whilst of the two cases in Group D the finishing of buildings is allowed by the Act, whilst land cannot fall into the "ripe" category unless planning permission has been granted.

This leaves only Group B in respect of which questions of compensation may arise in respect of the refusal of planning permission or the granting of permission subject to conditions. It will be recalled that Group B deals with developments freed of development charge by Schedule III but still requiring planning permission before development can be undertaken. It also includes developments freed of charge by the Development Charge Exemptions Regulations, 1948 (*ante*, p. 236), but there is no right to compensation in this case if permission is refused or granted conditionally.

Purchase Notice

3. There is, however, a possibility that if permission is refused or made subject to conditions as respects developments both within or outside Schedule III, that the land would be incapable of reasonably beneficial use and provision has therefore been made in s. 19 that if, on application to the local planning authority or the Minister or on appeal to the Minister, permission for any development is refused or made subject to conditions, any owner of the land may serve a purchase notice on the council of the county borough or county district in which the land is situated. If the Minister confirms this notice, the authority is deemed to have served a notice to treat on such date as the Minister may specify. Such a constructive notice to treat cannot be withdrawn.

4. Purchase notices must be served in accordance with para. 4 of the General Regulations, 1948, *ante*, p. 316, and the land must comply with the following conditions:—

(a) be incapable of reasonably beneficial use in its existing state of development;

(b) be unable to be rendered capable of such use by carrying out the permitted development in accordance with the conditions attached to the permission (where granted);

(c) be unable to be rendered capable of such use by the carrying out of any other development for which permission has been or is deemed to be granted, or for which the local planning authority or the Minister has undertaken to grant permission (where there is a Crown interest in the land, note s. 87).

A purchase notice may be served by any owner of the land. S. 119 defines "owner" as the person entitled to the rack rent.

5. Compensation in respect of acquisition will be generally in accordance with the relevant legislation under Part V of the Act, but where the development for which permission has been *refused* would have involved the demolition of substantially the whole of the existing buildings on the land, the value of the buildings is not to be taken as exceeding the value of the materials therein less the cost of demolition (s. 51 (5)).

This rule does not apply to the value of any interests in the same land which may be acquired subsequently to that acquired under a purchase notice.

Further by s. 51 (2) where any development in Sched. III (excluding the erection of a substituted building under para. 1, or the use of a building as two or more dwellings under para. 2) has been refused or granted conditionally before the date of notice to treat and compensation has become payable, it is to be assumed in arriving at the value of any interest being acquired that any further similar application would be similarly determined (s. 51 (2)). This rule also applies where planning permission has been granted and owing to its subsequent revocation or modification a purchase notice is served (see heading B of this article).

It is clearly important that the presumed date of the notice to treat under a purchase notice (except where the application for permission related to paras. 1 or 2 of Sched. III) should be fixed by the Minister as a date earlier than the date of refusal or grant of conditional permission or the date of revocation or modification of permission. Note that no separate claim for compensation in respect of the planning determination can be made under s. 20 where a purchase notice has been served in respect thereof (s. 20 (6)).

6. The owner of an interest in land other than that of the owner serving the purchase notice may claim compensation under s. 20 (considered *post*) : but the regulations require claims to be submitted within a specified period of the determination and other owners must endeavour to keep themselves informed as to what is going on. A planning application may be made by a stranger or by one party interested in a property without the knowledge of the persons, or other persons interested, as the case may be. There may be some effort to prevent hardship by administrative procedure, but the regulation as it stands is unfair and sacrifices owners' rights to administrative convenience.

The Minister may, however, instead of confirming the notice decide to permit the development or modify the conditions of consent to enable the land to be rendered capable of reasonably beneficial use by carrying out the development; or he may direct that permission for a specified alternative development shall be granted on application being made, if thereby the land could be rendered capable of beneficial use within a reasonable time (the direction in this case may relate to part only of the land, the purchase notice taking effect as to the remainder).

7. If the purchase notice is not confirmed as to the whole land by reason of a direction as to an alternative development of the whole or part thereof, compensation may be claimed under s. 20 (3) for the difference between (a) the value

of the interest of the applicant owner (so far as it relates to land in respect of which the notice is not confirmed) after allowing for any development charge exigible in respect of the alternative development and on the assumption that planning permission would be given only in accordance with the determination of the Minister, and (b) the value of the interest estimated for purposes of compulsory acquisition under a purchase notice. These values are presumably to be estimated as at the date of the Minister's determination.

The 1919 Assessment of Compensation Act will apply (s. 110 and Sched. IV of 1947 Act).

8. Compensation may be excluded on certain grounds under s. 20 (5) (conditions as to height and size of buildings, external appearance, and number of buildings).

9. There is no compensation payable if the Minister decides to allow the development subject to modified conditions under s. 19 (2) (*a*); presumably it is implied that such conditions shall not be depreciatory (s. 20 (*b*)).

Compensation for Refusal, etc., where Purchase Notice not Served

10. If permission is refused or granted conditionally (either on reference of an application to the Minister or an appeal to him) and a purchase notice is not served, then if the application did not relate to a substituted building or use of a house as two or more dwellings under paras. 1 and 2 of Sched. III a claim may be made under s. 20 (1) for depreciation in the value of the claimant's interest due to the refusal or the conditions imposed. A claim under this heading may be made by any person having an interest in the land, and is to be made in accordance with para. 4 of the General Regulations, *ante*, p. 316.

The 1919 Assessment of Compensation Act will apply (s. 110 and Sched. IV of the 1947 Act).

It is to be assumed in determining the compensation that any future application for the like permission would be similarly determined and regard is to be had to any undertaking by the Minister that permission will be granted for some other development on application being made. The valuation will presumably be as at the date of the confirmation of refusal or of the conditions imposed.

11. Compensation may be excluded in respect of certain conditions under s. 20 (5).

Difficulties

12. As regards the use of a building as two or more separate dwellings under para. 2 of Sched. III there is no development charge if permission is granted and no compensation if refused. If a house is incapable of beneficial occupation as a single unit and permission to divide the use is refused, the only statutory remedy is a purchase notice.

Presumably using as two or more separate dwelling-houses would include the use following a conversion into two structurally self-contained flats as well as letting in unseparated parts. The works would fall to be considered under s. 12 (2) (*a*) or para. 3 of Sched. III. Would they be separate dwellings if the kitchen is to be used in common? (Compare cases under Rent Restriction Acts.)

13. The word " dwelling-house " requires consideration as it appears in both paras. 1 and 2 of Sched. III. In para. 1 on rebuilding a building which is a dwelling-house, the building may be enlarged by 1750 cu. ft. or 10 per cent. of its original cubic content whichever is the greater. " Building " is here presumably intended to refer to the entire building although by definition under s. 119 (1) it includes part of a building. If the building is divided into a number of separate dwelling-houses as under para. 2 it is presumably not intended that an addition of 1750 cu. ft. can be made to each separate dwelling-house.

Assuming therefore that it is the entire building which has to be considered the word " dwelling-house " may have a very wide interpretation for which cases under the Housing and Public Health Acts should be consulted.

In para. 2 the position is a little easier for we start with a building which is a single dwelling-house which can be probably considered as to some extent equivalent to that well known form of covenant to use as a " private dwelling-house only ", except that the omission of the word " private " leaves an opening for professional residences and shops with residential accommodation to come within the provision. Such a house may come to be used as two or more separate dwelling-houses, and although there is doubt as to what will constitute *separate* dwelling-houses, it seems improbable that using the building as a lodging house or letting apartments would fall within this paragraph. Such a change of use would have to be considered within the broad formula of a " material " change of use under s. 12 (2), and this is no doubt a matter of degree and locality. The change of use from a building occupied as a shop and residence to a shop in one occupation and residence in a separate occupation would not be within the paragraph, but can part of a building (whether structurally severed or not) where it is occupied as a separate dwelling-house be divided and used as two or more dwelling-houses? See also para. 18 of Article III (*ante*, p. 266).

14. If permission for the rebuilding of any structure as under para. 1 of Sched. III is refused, the only remedy is a purchase notice.

15. An application to erect new buildings substantially different from and larger than the old buildings is presumably an application for development within para. 1 of Sched. III to rebuild and enlarge, and para. 3 to alter, coupled with an independent application for additional enlargement. Para. 3 relates to the alteration or enlargement of an original or a substituted building. Para. 1 relates to rebuilding with or without enlargement. Presumably, therefore, a building may be enlarged but not altered in the course of rebuilding, the right being to replace substantially what previously existed. Possibly, however, the proposed building can be regarded as notionally existing and so altered under para. 3. The additional enlargement (in excess of 10 per cent.) carries no rights whatever if refused; the replacement and enlargement under para. 1 is safeguarded by s. 51 in the event of a purchase notice becoming necessary, but the alterations under para. 3 would have to be ignored unless the presumed date of notice to treat is fixed earlier than that of the refusal of permission. If the purchase notice is not confirmed the only possible claim is under s. 20 (3) as already noted. The importance of knowing what applications other owners are making is again stressed.

An application to rebuild an old building with 10 per cent. enlargement will relate to development within para. 1 of Sched. III; thus if permission is given to rebuild without enlargement, s. 19 and not s. 20 would apply, *i.e.*, the remedy would be a purchase notice and not a compensation claim. There would, however, appear to be nothing to prevent a further application for enlargement being made under para. 3 of Sched. III after completion of rebuilding, and on refusal of this s. 20 would be invoked. Possibly this could be short-circuited by specifying that the original application was being submitted for rebuilding as development within para. 1, and enlargement of the notional building a development within para. 3. Alternatively, and perhaps preferably, application to alter could be made prior to demolition of the original building and if refused the claim under s. 20 would have regard to the effect of refusal on rebuilding.

Compensation for Refusal, etc., where Buildings or Works Commenced before July 1, 1948

16. See s. 79 as to special claim for expenditure on work rendered abortive by refusal of permission or conditions attached thereto, in respect of buildings or works commenced in accordance with earlier planning control but not completed on July 1, 1948.

This compensation is to be assessed without regard to that under s. 19 or s. 20, but compensation under these two sections is to be reduced by the *value* of the works compensated for under s. 79 (not by the amount paid under s. 79).

Compensation is to be assessed under the 1919 Act *procedure* (s. 110), but the rules of s. 2 of that Act do not apply (Sched. IV).

See, however, s. 78 as to non-contravening unfinished erection or alteration of buildings, which may be completed as though permission had been granted under Part III of 1947 Act.

See also s. 77 where interim development consent granted since July 21, 1943.

B. REVOCATION AND MODIFICATION OF PLANNING PERMISSION

17. A claim may be made under s. 22 (1) by any person interested in the land for expenditure in carrying out work rendered abortive and any other loss or damage directly attributable to the revocation or modification of permission so far as arising after the granting of the permission which has been revoked or modified.

No claim will lie for depreciation in an interest in land unless a development charge has been paid or none is payable under Part VIII of the Act (special cases not including exemptions under s. 69 (2) (*b*)) and it is to be assumed that permission would be given for any development in Sched. III. In any case of revocation or modification of permission a purchase notice may be served subject to conditions (a), (b) and (c) set out under the heading " Purchase Notices ", *supra*, whilst if the permission revoked or modified is a development within Part 2 of Sched. III, there will also be an alternative right to claim compensation under s. 20.

18. Compensation payable under s. 20 is to be reduced by the *value* of any works compensated for under s. 22. Presumably this value is post-revocation value, and it is not necessarily the same as the expenditure incurred thereon.

By s. 73 (4) regard is to be had to any development charge paid and any action taken by the Central Land Board to modify or discontinue the charge under s. 73.

The 1919 Act applies *in toto* where the value of an interest in land is concerned (s. 110 and Sched. IV), and in other cases the procedure applies but not the rules of s. 2 (s. 110).

Expenditure includes the cost of preparation of plans and similar preparatory matters. Presumably the loss or damage sustained is to be assessed as at the date of revocation or modification of the permission.

Where the permission rests on a development order, and is withdrawn by the amendment or revocation of the order, or under powers of the order, application for the like permission may be made to the local planning authority, and if this is refused or granted subject to different conditions from those formerly applying, the original permission is to be deemed to be revoked or modified under s. 21 and rights of compensation as under s. 22 will follow.

C. Planning Enforcement against Conforming Buildings and Uses

19. This heading relates to development carried out otherwise than in contravention of earlier planning control, development contravening earlier control but not subjected to notice under s. 75 and development carried out with permission (actual or deemed) under Part III of the 1947 Act. It does not apply to buildings lawfully in course of erection nor to changes of use authorised but not effected, these being dealt with by revocation or modification of permission under s. 21.

Claims under this heading will arise out of orders made under s. 26 requiring the removal or alteration of conforming buildings or the discontinuance of conforming uses or their continuance subject to conditions. Any person suffering damage may claim whether the injury is depreciation in the value of his interest in the land or disturbance of his enjoyment of the land (presumably a mere licensee might claim).

The 1919 Act applies *in toto* (s. 110 and Schedule IV).

Any valuations of depreciation in the value of an interest in land must no doubt have regard to its value before and after the making of the order. The value before the making of the order would be that of the interest with its planning permission and rights and subject to any outstanding development charge (by s. 73 (4) regard is to be had to any development charge paid and to any action by the Board to amend or discontinue the charge under s. 73 (1) or (2)).

There is also conditional power *for any person having an interest in the land* to serve a purchase notice or (if it is not confirmed) to claim compensation under s. 20 (3), in either of which cases no compensation is payable under s. 27, all losses and injury being gathered up in the compulsory purchase price or the compensation under s. 20 (3). The conditions as to service of a purchase notice are similar to conditions (a) and (c) under the heading "Purchase Notices", *supra.*

Expenses incurred in complying with the requirements of the authority may be recovered less a credit for materials removed (Sched. IV, para. 4).

D. COMPENSATION FOR TREE PRESERVATION ORDER

20. This will be governed by the tree preservation order made under s. 28 (see s. 28 (1) (*d*)).

E. COMPENSATION FOR BUILDING PRESERVATION ORDER

21. This will be governed by the building preservation order made under s. 29 (see s. 29 (2) (*c*)). See also power of purchase under s. 41.

F. COMPENSATION FOR REMOVAL OF ADVERTISEMENTS

22. There is a right under s. 32 (2) to claim for the cost of works carried out under the regulations to be made under s. 31. The right is limited to the reasonable expenses incurred in removing advertisements, or on works for discontinuing the use of a site for advertising purposes provided in the former case that the advertisements were being displayed before January 7, 1947. S. 31 (5) gives a temporary protection against interference with existing advertising sites and advertisements. "Advertisement" includes all descriptions of signs, hoardings and other structures for display of advertisements (s. 119 (1)).

G. COMPENSATION FOR INJURIOUS AFFECTION BY DEVELOPMENT PLAN

23. The provisions of s. 22 of the Town and Country Planning Act, 1932 (repealed as from July 1, 1948), by which

compensation could be claimed where an interest in land within the area of the scheme was injuriously affected by the coming into operation of the provision of a scheme which curtailed a legal right, is not re-enacted, but neither is s. 23 under which a responsible authority could claim betterment where land was improved in value by the coming into operation of a provision of a scheme. Any improvement in existing use value remains in the hands of the owner, so far as it can be reaped (a) within the cube of the existing buildings and the right to a 10 per cent. enlargement thereof, and (b) within the permitted continuance and extension of an existing use (Sched. III, para. 7).

The planning proposals themselves will, in future, give no right to an owner to claim compensation, although they may be relevant in considering injurious affection arising out of the development of land acquired. This will be discussed in Articles V and VI.

CENTRAL LAND BOARD FORMS

[*Continued from p.* 256, *ante.*]

D. 1. (Minerals.) Special form of application for the determination of development charge in respect of the winning and working of minerals or building and engineering operations to be carried out on or near the site of a mine or quarry for the purpose of winning and working minerals or of processing minerals.

[*Note.*—Under Reg. 4 (1) of the Minerals Regulations, 1948 (*ante*, p. 331), no development charge is payable in respect of the winning and working of minerals for three years from July 1, 1948, in land in which on that date a mineral undertaker had, or had the right to acquire, an interest entitling him to win and work the minerals. There is also a modification of the normal arrangements with regard to claims on the £300,000,000 fund (see *ante*, p. 246).

Those who had an interest in the commercial working of minerals on July 1, 1948 (including, in particular, mineral undertakers, owners who are operating mineral workings on their own land, and royalty owners—need not complete Questions 27 and 28 of Form S. 1. These owners (to whom Question 17 of the Form is specially addressed) will be sent a supplementary form which includes questions similar to 27 and 28 of Form S. 1. The Board's offer to contribute towards professional costs incurred by claimants will continue to apply, provided that satisfactory answers are given to those questions in such supplementary form.]

Dealings with Land under the Planning Acts

By Harold Potter, LL.D., Barrister-at-Law

I. Inquiries Preliminary to Contract (*ante*, p. 48).
II. Contract for Sale (*ante*, p. 104).
III. Requisitions on Title (*ante*, p. 188).
IV. Conveyances on Sale (*ante*, p. 273).
V. **Leases.**
VI. Mortgages.
VII. Settlements and Wills.

Leases

1. The vital change in the law caused by the Town and Country Planning Act, 1947 (hereinafter called the Act) so far as it affects leases and other limited interests can be seen at a glance from a quotation from the speech of Lord Blackburn in the leading case of *Doherty* v. *Allman* (1878), 3 App. Cas. 709 at p. 735, where store buildings were converted into dwelling-houses. He said : " I will only say one word about the alteration of title. I can perfectly understand that five or six hundred years ago that was an extremely serious matter, that where the evidence of title depended entirely upon the memory of witnesses, to change a meadow into a wood or a wood into a meadow would have been a serious matter as far as regards the evidence of title. . . . But nowadays . . . any damage in regard to evidence of title is quite wild and chimerical or is at least purely nominal ". Since July 1, 1948, however, we revert to the position five or six hundred years ago. Any material change in user is of the most serious character, because the lessor may find himself in difficulty.

To begin with, as we have pointed out (*ante*, pp. 106, 108), the question of the validity of user under present conditions presents problems of proof. Any act on the part of the lessee which complicates the problem is obviously disadvantageous to the lessor. But, furthermore, the lessor may find himself saddled with an enforcement notice requiring him to bear the expense of removing buildings or other things contravening the Act. It is only fair to point out that the lessee is just as awkwardly placed. His lease may include contraventions of the Act which may be vital to the purposes for which he took his lease or which may involve him in the expense of removal.

2. It is suggested that the time has come to reconsider the traditional attitude between intending lessor and lessee and to make the burden on the lessee a little less onerous. Nevertheless, there is so much variation in the covenants of lessor and lessee that we can only hope to offer a few suggestions and forms with the warning that any precedents supplied here must be scrutinised carefully in conjunction with the other covenants actually inserted in the lease or there will be serious danger of ambiguity.

There appear to be five principal points which require consideration : (i) planning contravention prior to the grant of the lease ; (ii) development including planning contravention during the continuance of the lease ; (iii) expenses caused in fulfilling planning directions ; (iv) notice to be given of proposed orders or directions and (v) frustration by intervention of the planning authority. There is at the moment also the problem of claims on the global sum for loss arising from restricted user. It is doubtful whether that can affect new leases and it is dealt with briefly and last.

The other questions can all arise with regard to leases existing on July 1, 1948, but for these nothing can immediately be done short of surrender of the lease and it is not proposed in this article to attempt an exhaustive survey of the cases which may afford assistance. It will, however, be necessary to refer to some authorities in explaining the points in dealing with other leases and it is hoped that they may afford some guidance should subscribers have to deal with the problem in relation to existing leases.

(i) *Planning contravention prior to lease*

3. Before taking a lease it will clearly be desirable to make the same sort of investigation as that prior to contract for sale which has already been dealt with in earlier articles (*ante*, pp. 48 *et seq.*). To these inquiries should be added inquiries addressed to the local planning authority including inspection of the Development Plan, if any. The practice of lessors deducing no title is inconvenient in this case and we can see no good ground for the lessor refusing to answer the questions set out in the forms provided.

We emphasise this point because there is little doubt that there will be many occasions in which, quite innocently no doubt, lessors will grant leases of land being used for purposes which constitute a contravention of the Act. At the present time it is particularly important in connection with the Interim Development Act of 1943 and especially so where there is a provisional plan. The indications are that the planning authorities will enforce conformity with the plan no matter how innocently the occupier for the time being may have acted.

It is true that the expenses of compliance with an enforcement notice fall primarily on the person responsible for the development : s. 24 (2) : nevertheless they will be recoverable by the local planning authority (if it has to enforce the notice) from the owner. The "owner" is defined as the person who would be entitled to receive the "rack rent" : in the case of long terms presumably the lessee : s. 119 (1).

4. In our view the lessee would have no claim against the lessor in respect of his covenant for quiet enjoyment by reason of any interference on the part of the planning authority. Such an interference would be by title paramount and not under but against the lessor, and so the lessor would not be liable on his covenant : cf. *Stanley* v. *Hayes* (1842), 3 Q. B. 105; *Woodhouse* v. *Jenkins* (1832), 9 Bing. 431; *Pease* v. *Courtney*, [1904] 2 Ch. at p. 512. Furthermore, there is no implied undertaking by the lessor that the premises are fit for the purposes for which they are intended to be used : *Erskine* v. *Adeane* (1873), L. R. 8 Ch. 756; *Manchester Bonded, etc., Co.* v. *Carr* (1880), 5 C. P. D. 507; cf. *Blum* v. *Ansley* (1900), 16 T. L. R. 249; a reversionary lease of licensed premises contained no guarantee that they would be licensed when they fell into possession. Consequently, it would seem that apart from fraud a lessee would be without remedy against his lessor notwithstanding that he was put to expense and could not use the premises for the intended purpose.

5. On the other hand, it seems possible that the lessor may be liable by express warranty that the premises are fit to be used for the purposes intended by the lessee, which now must, in fact, be the authorised user. The question in the past has turned rather upon agreements for a lease than a lease : see *Jones* v. *Lavington*, [1903] 1 K. B. 253 at p. 258; *Crawford* v. *White City Rink* (1913), 29 T. L. R. 318, and much of the learning is connected with the unsatisfactory law relating to collateral warranties; cf. *De Lassalle* v. *Guildford*, [1901] 2

K. B. 215; cp. *Green* v. *Symons* (1897), 13 T. L. R. 301; *Collins* v. *Hopkins*, [1923] 2 K. B. at p. 628. Nevertheless, *prima facie*, the actual user of the premises at the time of the lease would be the authorised user and it is unreasonable that a lessor, who should have the knowledge of the authorised user, should expect a lessee to accept the risk of this user being unauthorised.

6. In our view the simplest and fairest method of dealing with the problem is to adopt a similar method of describing the premises to that employed in the case of sale by setting out the user of the premises (this will be convenient for other reasons hereafter appearing). Then a simple clause should be added providing that any interference by the planning authority based on a contravention prior to the lease shall be deemed to be a breach of the covenant for quiet enjoyment.

(ii) *Development during the Lease*

7. Development may occur during a lease in three ways: (a) development which is authorised by the existing user and requires no planning permission and consequently carries no development charge; (b) development requiring a planning permission and in most cases involving a development charge; and (c) development which is a contravention of the Act.

(a) *Development authorised by existing user*

8. The Statutory Instruments which at present control development and development charges are not easy to follow or apply. They comprise the Use Classes Order, 1948 (summarised at p. 145, *ante*), the General Development Order, 1948 (printed in full at p. 149, *ante*), the Use Classes for Third Schedule Purposes Order, 1948 (summarised at p. 148, *ante*), and the Development Charge Exemptions Regulations, 1948 (printed in full at p. 236, *ante*). In Circular No. 47 the Ministry of Town and Country Planning said of the General Development Order that it "attempts to strike a balance between a necessary degree of planning control and a reasonable freedom for developers to carry out minor day-to-day operations. It may be that not quite the right balance has been achieved and it is the Minister's wish that the attention of his officers should be drawn to any case in which the order does not work well in practice, so that revision of the order can be considered". It is necessary, therefore, to bear in mind that changes in these orders may be made before very long and that the things which may be done at the beginning of a lease

without getting planning permission or without attracting a development charge will not necessarily be the same as later on in the duration of the lease.

9. Apart from the question of liability under the Act there is also the problem of "title" to the use which we discussed in connection with conveyance: *ante*, p. 274. It is not so much a question of preserving it for future freeholders as for future assignees. It is in the interest of the lessee to ensure that his title is plain. From the point of view of the lessor he should also have a record and a check.

It, therefore, becomes apparent that every lease should not only describe the "existing use" as we have already suggested, but also contain a provision that no "material change" in use should be made without the licence of the lessor. The existing precedents for this covenant may be sufficient, but what does constitute an "alteration" has already been the subject of litigation: cf. *L. C. C.* v. *Hutter*, [1925] Ch. 626; *Day* v. *Waldron* (1919), 88 L. J. K. B. 937, and cp. *Lambert* v. *Woolworth*, [1937] Ch. 37; [1938] Ch. 883. And there should be borne in mind the provisions of s. 19 (2) of the Landlord and Tenant Act, 1947 (under which a covenant not to make improvements without the licence or consent of the lessor must be read subject to the proviso that such licence or consent is not to be unreasonably withheld. In our view, therefore, it is desirable to employ a new form of clause especially designed to deal with the changed circumstances.[1]

There is the further point that if a development charge can be payable in respect of a material change authorised by the General Development Order, it is desirable to provide with regard to its incidence, but we deal with this under the succeeding head.

(b) *Development involving permission and charge*

10. Where a development needs a planning permission there are further complications. If such a permission is given it enures for the benefit of the land unless otherwise provided: s. 18 (4). Nevertheless, it seems desirable that all permissions should be applied for on behalf of the lessor and all other persons for the time being interested in the land. Should anything occur to prevent the completion of the application by the tenant, as, *e.g.*, the forfeiture of his lease, this would

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[1] See *post*, p. 365.

not presumably then affect the application. How far it is possible in practice to do this remains to be seen.

11. More serious is the problem of the development charge. A tenant may not unnaturally be unwilling to bear the whole of the charge the major benefit of which may enure to the lessor. This is a matter which must be settled on negotiation for the lease. It should clearly be provided for in any lease unless no such development can be contemplated, when it could be agreed upon if a request for consent is made. The natural provision would be that the capital charge should be borne by the lessor and an increased rent paid by the tenant, but this will depend to some extent on the length of time that the lease has to run. The problem alone may operate to stifle development.

12. It must be remembered that once a "development" has been made it cannot normally be removed without a planing permission since such removal would constitute a material change in use. Where, therefore, such a change is contemplated by the lessee he may be well advised to stipulate for such consent by the lessor in the lease unless he is prepared to wait. When it comes to the point many lessors may be reluctant to allow material changes even if they are to be paid for by the lessee, since they might affect future lettings of the property. It is in this sort of connection that the present right to change the use under the General Development Order may be valuable, though here it should be pointed out that the general permission may not be as wide as seems at first sight. For example, it is possible without permission and without charge to change from a grocer's shop to a butcher's shop, but in all probability such a change would affect the external appearance of the shop. This might require a planning permission as a material change and such permission *might* carry a development charge. Consequently, both lessor and lessee cannot be too careful.

13. Furthermore the lessor should be entitled to an indemnity against any act by the lessee which is not in fact authorised by the planning permission. There can be little doubt that such infringements will occur quite innocently, apart from any other possibility. Such an infringement may result in an enforcement notice under s. 23 with corresponding expense which might fall in fact on the lessor, though in theory it lies *ultimately* on the person making the infringement: s. 24: at least to some extent.

Although all applications for planning permissions must be registered in their register by the local planning authority, nevertheless, it is undoubtedly desirable that a lessee should deliver particulars of all planning matters to the lessor who should ensure that all such things are kept with the title deeds.

(c) *Development contravening planning control*

14. Developments which contravene the Act may well be "waste",[2] but unless there be a covenant against waste the only remedies would be an injunction and damages. In these circumstances there can be no question but that all leases should contain an express covenant in order to enable the lessor to forfeit the lease subject, of course, to the provisions of s. 146 of the Law of Property Act, 1925. This only reinforces what we have said above (para. 13), but it may be convenient to combine this covenant with one against waste.

(iii) *Expenses, etc., of Fulfilling Planning Directions*

15. Where a lease contains a covenant against "outgoings" most payments affecting the premises will fall upon the lessee; so, for example, he will be liable for the expense of making up a road adjoining the premises: *Lowther* v. *Clifford*, [1927] 1 K. B. 130; even before the lessor has been called upon to pay it: *Francis* v. *Squire* (1940), 162 L. T. 63, notwithstanding that the tenant is holding over as a yearly tenant: *Lowther* v. *Clifford*, (*supra*). Nevertheless, it would seem that this and similar words apply only to claims that would constitute a charge on the premises though they may primarily be of permanent benefit to the freehold: cf. *Arding* v. *Economic Printing Co.* (1898), 79 L. T. 622; *Foulger* v. *Arding*, [1902] 1 K. B. 700; cf. *Henman* v. *Berliner*, [1918] 2 K. B. 236. It is, therefore, doubtful whether the kind of claims which arise under the Act would fall within the same category. It is at least necessary to distinguish between two kinds of pecuniary obligation, independently, of course, of fines payable in respect of contravention. The fines would only be payable by the lessor, if he was responsible for the contravention.

16. First, there are the costs and expenses involved in compliance with a direction due to a contravention, such as removing a building or converting the property to its permitted use. These financial obligations, if they arise from

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[2] The point will arise on leases made before the Act and it is hoped to deal with it at a later date.

acts of the lessee during the term, clearly should fall upon the lessee and should be provided for in the covenant.

Secondly, there are the costs and expenses arising from compliance with directions relating to development. It must be borne in mind that any planning permission may be subject to conditions and restrictions: s. 25. This follows the old practice and it is likely to continue. It seems desirable to provide directly for the manner in which these costs and expenses shall be borne. It must be remembered, particularly in the case of long leases, that it is not improbable that during the term some material change in use may occur. It is doubtful whether past experience will form an adequate guide owing to the stringency of the restriction on use now imposed by the Act. At the same time it is difficult to supply any general clause because the circumstances will vary so considerably.

(iv) *Notices to be Given of Proposed Orders*

17. Although most notices or orders, such as enforcement notices : s. 23 (1), tree preservation orders : s. 28 (4), building preservation orders : s. 29 (4) or abatement notices : s. 33 (1) will be served on the "owner" and occupier of the land, "owner" is defined as the person entitled to a rack rent : s. 119. Therefore, in all leases not at a rack rent it is desirable to include a covenant by the lessee to give notice of any such notice, order or proposed order affecting the land. Even if the lessor can do nothing to protect himself (a matter with which we are not here concerned) it is obvious that he should have full particulars of what is going on.

18. Normally there is nothing that the lessor can do to arrest the operation of any of these notices or orders when made as distinct from proposed. He may be able to ensure only that where notice of a proposed order, such as a tree preservation order, is given steps are taken to make representations or objections. The expense of such representations and objections should normally fall upon the lessor if made at his request. It is thought that if the lessee wishes to object although the lessor does not, then the matter need not be referred to in the lease.

19. So far as enforcement and abatement notices are concerned the position is rather different. Here "any person aggrieved" can appeal to a Court of Summary Jurisdiction to quash or vary the order : s. 23 (4); s. 33 (2). The time limit for appeal is short, being limited to twenty-eight days,

but presumably a lessor may easily fall within the category of "person aggrieved". The expenses of appearing in such proceedings would presumably be borne by the person appearing. It appears to us to be one of the major defects of the Act that a lessor is left dependent upon his lessee (who will normally be in default anyway) for information concerning these matters. Nevertheless it seems only possible to make the lessee pass on notice within a short time.

20. If an order for discontinuance of an existing use is made under section 26 any person suffering damage due to depreciation is entitled to compensation: s. 27 (1): and in certain circumstances to compel compulsory purchase of his interest: s. 27 (3). This does not appear to require any special provision. Provided the lessor gets notice of the order he can then take such steps as he is advised to take.

21. Notice of a proposed Development Plan or any amendments of it is to be given by advertisement. It is doubtful whether it is reasonable to require the lessee to inform the lessor of any matters of which he is not bound to get notice except perhaps when he has notice. This particularly applies to Development Plans which as a rule only affect the land indirectly. There may be designation for compulsory purchase, but this scarcely affects the land directly till service of the notice. Consequently, the precedent does not refer directly to Development Plans and, if there are reasons for believing this to be important, some special provisions must be inserted.

(v) *Frustration by Intervention of Planning Authority*

22. In the present state of the authorities the doctrine of frustration does not apply to leases, but the matter is still open for the House of Lords: *Cricklewood Property and Investment Trust* v. *Leighton's Investment Trust*, [1945] A.C. 221, where a building lease was held not to be frustrated by the restrictions imposed on building during the war and the rent was recoverable by the lessors. Covenants to repair and deliver up in repair have not been frustrated by interference: *Matthey* v. *Curling*, [1922] 2 A. C. 180; nor is the liability to rent affected by requisition even of furnished premises: *Swift* v. *Macbean*, [1942] 1 K. B. 375. Yet it is obvious that the lessee may be seriously injured if the permitted use of the premises is varied by the results of planning. This can be

illustrated from a case where the lessee of licensed premises was held liable for rent notwithstanding that the licence was taken away by a subsequent statute : *Grimsdick* v. *Sweetman*, [1909] 2 K. B. 740.

23. Where any contemplated use is not at the date of the proposed lease a permitted use it seems obvious that, until such planning permission is obtained, the lessee should decline to do more than enter into a contract for a lease. It seems that the doctrine of frustration does apply to contracts to make a lease : *Taylor* v. *Caldwell* (1863), 3 B. & S. 826. Apart from this obvious case there are three principal points : (i) the actual use at the date of the lease may not be a permitted use ; (ii) the permitted use at the date of the lease may be rendered invalid by subsequent planning changes ; and (iii) one or more of the covenants may be or become invalid owing to planning restrictions or directions, such as lopping trees.

It is thought that if the clause declaring a use invalid at the date of the lease to be a breach of the covenant for quiet enjoyment is employed a lessee will be protected sufficiently by his right to claim for loss. It is, therefore, not necessary to deal further with this point.

The third head should as a matter of fairness be dealt with simply by a declaration rendering such a covenant ineffective in the case of the planning restriction or direction making it impossible. It is essentially a question that should never be overlooked save in small properties where the possibilities of change of user are very remote. The second problem, namely, that of a change in the permitted use due to alterations in the planning scheme is more difficult. For example, at the present time and under the Use Classes Order (*ante*, p. 145), it is possible to vary the use within the class "light industrial building" so that a lessee may easily take a lease of premises when he anticipates probable change of user within the existing class. In our view it is by no means improbable that the present order will be revoked and altered after some experience of its working. When that occurs the project of our lessee may become impossible. Whether the risk of this sort of thing is to fall on the lessee or the lessor appears to be arguable. As the law stands at present we think that in the absence of express provision the loss falls on the lessee. In our view it may be well to have express provision in every case. It avoids the possibility of litigation.

(vi) *Claims on the Global Sum*

24. Claims on the global sum vest in the owner on the Appointed Day. Therefore, it does not appear that, apart from express provision, any claim could be made by a lessee whose lease is granted after the Appointed Day. The only significance, therefore, of this right is that if the lease requires the lessee to pay the development charge the lessor will in effect get the advantage of the development twice over. This is clearly a matter for negotiation, and unless some satisfactory way is found the total effect is likely only to increase the cost of accommodation to the public and will not have the desired effect of passing the benefit to the State. With this aspect of the matter we are not concerned, but we may perhaps be allowed to hazard the guess that if this result does happen full nationalisation of land will be brought one step closer.

(vii) *Conclusion*

25. We have only attempted the most obvious conclusions relating to leases and do not anticipate that we have caught up all the problems. Furthermore, we have only dealt with those matters which may affect the actual clauses in the lease. Provisions that may give rise to problems as between landlord and tenant but do not affect the form of lease we have not attempted to touch. We think that the Act may have greater effect on the law of landlord and tenant than on the law relating to freeholders, but this must be left to another occasion merely reminding practitioners that it must be remembered if and when disputes arise.

Form of Lease (with variations)[1]

By Harold Potter, LL.D., barrister-at-law

This lease made the —— day of—— Between A B of *etc.* (hereinafter called the Lessor which expression shall where the context so admits or requires, include the estate owner or estate owners for the time being of the reversion of the premises hereby demised expectant on the term hereby granted) of the one part and C D of *etc.* (hereinafter called the Lessee which expression shall where the context so admits or requires include his executors, administrators and assigns) of the other part Witnesseth that in consideration of the rent covenants and conditions hereinafter contained and on the part of the lessee to be paid performed and observed the Lessor hereby demises unto the Lessee all that *etc.*[2] to hold the same unto the Lessee for the term of —— years from the —— day of —— Yielding and Paying therefor yearly during the said term hereby granted the rent of £—— to be paid without any deduction except for landlord's property tax by equal payments on the —— day of —— in every year, the first of such payments to be made on the —— day of —— next [and also paying by way of further or additional rent such sum as shall be equal to £—— per cent. per annum upon all moneys which the Lessor may from time to time expend or may repay to any planning or other local or public authority in or towards or in connection with the execution of works of any description in or connected with the demised premises or any additions or alterations thereto made done or suffered by under or in connection with the Town and Country Planning Act 1947 such last mentioned rent to commence and be payable from the [quarterly] day for payment of rent which shall happen next after any moneys or expenses shall be so expended or repaid and to continue during the residue of the said term] and the Lessee hereby covenants with the Lessor in manner following, that is to say :—

1. [*To pay rent, rates and taxes.*]

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[1] This is only a skeleton form which does not include the many covenants customary in leases but they can, of course, readily be incorporated from the ordinary precedent books.

[2] For parcels, see *ante*, p. 281.

2. And also will not at any time during the said term without the previous consent in writing of the lessor erect make or maintain or suffer to be erected made or maintained on the premises hereby demised or any part thereof any building erection or improvement or make or suffer to be made any material change or addition whatsoever in or to the [dwelling-house or other] buildings erected or to be hereafter erected thereon or on any part thereof or in or to the use of the land or any part thereof and also if the lessor shall consent in writing as aforesaid will duly apply to the local planning authority as defined by the Town and Country Planning Act 1947 for any necessary permission to erect make or maintain such building erection improvement material change or addition And also will make such application in the name or on behalf of the lessor and all other the persons (if any) for the time being interested in the said premises and will give to the lessor notice of such permission if granted within —— days of the receipt of the same from the said planning authority And also the lessee will at all times indemnify and keep indemnified the lessor his estate and effects against all proceedings costs expenses claims and demands whatsoever in respect of the said application.

3. And also will within —— days of the receipt of notice of the same by him give full particulars to the lessor of any notice or proposal for a notice or order or proposal for an order made given or issued to the lessee by a planning authority under or by virtue of the Town and Country Planning Act 1947 and if so required by the lessor produce such notice order or proposal for a notice or order to the lessor And also will without delay take all reasonable or necessary steps to comply with any such notice or order And also will at the request [and cost] of the lessor make or join with the lessor in making such objection or objections or representation or representations against or in respect of any proposal for such a notice or order as the lessor shall deem expedient.

4. And also will not do or omit or suffer to be done or omitted any act matter or thing in on or respecting the premises hereby demised required to be omitted or done (as the case may be) by the Town and Country Planning Act 1947 or which shall contravene the provisions of the said Act or any of them And will at all times hereafter indemnify and keep indemnified the lessor against all actions proceedings costs expenses claims and demands in respect of any such act matter or thing contravening the said provisions of the said

Act or any of them as aforesaid And also will not commit wilful or voluntary waste spoil or destruction in or upon the said premises.

5. [*Add other relevant covenants such as covenant to insure.*]

6. [*Lessor's covenants including covenant for quiet enjoyment.*]

7. It is hereby agreed and declared between the parties hereto as follows :—

(a) The premises hereby demised are demised for use [as a single dwelling-house [and outbuildings [including a garage] [3]] and curtilage]*or* [for the purposes more particularly described in the Schedule hereto] together with the right with the consent in writing of the lessor to use the said property for such other purposes as may at the date hereof or hereafter be authorised under or by virtue of the Town and Country Planning Act 1947

(b) Any act matter or thing being in contravention of the Town and Country Planning Acts 1943–1947 committed before the commencement of this Lease by reason whereof the lessee shall or may suffer any damage shall be deemed to be a breach of the lessor's covenant for quiet enjoyment hereinbefore contained

(c) The costs expenses claims or demands incurred or made in respect of any works executed in pursuance of or otherwise arising in connection with compliance with any planning permission or order for discontinuance of user of the demised premises or any part thereof granted or made under or by virtue of the Town and Country Planning Act 1947 shall be borne by the lessor and the lessee in such proportions as they shall agree and in default of agreement shall be determined according to the benefit or loss respectively enjoyed or suffered by the lessor and the lessee by arbitration in accordance with the Arbitration Acts 1889–1934

(d) Nothing herein shall render the lessor or lessee liable in respect of any of the covenants conditions and provisions hereinbefore contained if and so far only as the performance or observance of such covenants conditions and provisions or any one or more of them shall hereafter become a contravention of or otherwise impossible or illegal under or by virtue of the Town and Country Planning Act 1947 but subject as aforesaid the term hereby granted and the rent payable to the lessor in respect thereof shall not determine by reason only of any changes modifications or restrictions of user of the said premises or obligations or requirements (if any) hereafter to be made or imposed under or by virtue of the said Act

---

[3] Use as a garage requires planning permission unless so used at the Appointed Day.

(e) For the purposes of this Lease the Town and Country Planning Act 1947 shall be deemed to include any Act or Acts for the time being amending or replacing the same and any Orders Regulations or directions issued under or by virtue of the said Act and any Act or Acts for the time being in force replacing the same

IN WITNESS, *etc.*

[The SCHEDULE above referred to.]

Some Planning Queries

[*The following are some of the questions submitted to the officials of an urban district council since the Appointed Day.*]

1. Planning permission granted before July 1, but house has not been built. Is this subject to development charge?

   Yes, unless it is "dead ripe". See answer to question 2.

2. What is "land ripe for development?"

   "Land ripe for development" is either "dead ripe" within s. 80 or "near ripe". Land is not "dead ripe" until the Minister grants a certificate to that effect; see *ante*, pp. 16, 308. In that case it neither attracts development charge nor qualifies for a claim for loss of development value. At present "near ripe" land is confined to land of registered builders; see *ante*, p. 307. How far it is to extend to "single plot" owners is unsettled; see *ante*, p. 246.

3. Twenty acre field was zoned in a draft scheme as building land by L. A. The layout plan for roads, sewers and houses was submitted for only a third of this area, and the local authority approved this plan in 1939. Most of the plots have been built upon. (a) Are the remaining unbuilt-upon plots (fenced off and fronting a new road) subject to development charge? (b) If subject to development charge, can they claim compensation for loss of development value, having bought the parcel of land as a building plot?

(a) Yes, unless they are certified as "dead ripe"; see answer to question 2 above; and see *ante*, p. 308.

(b) Yes.

4. The local authority granted bye-law and planning permission also a licence to build a house. (a) How does the local authority know when the development charges has been paid, and (b) who is responsible for seeing that development does not take place until the charge is paid?

(a) The local planning authority will presumably be notified by the Central Land Board when the development charge has been paid.

(b) The Central Land Board: see s. 74.

5. Land is already zoned for residential purposes under an Operative Scheme and partly developed. (a) Is planning permission necessary for the undeveloped portion of the estate, and (b) is this undeveloped land subject to a development charge?

(a) Yes, unless the Scheme came into force since July 22, 1943, because planning permission granted before then lapsed on July 1, 1948: see *ante*, p. 69.

(b) Yes.

6. Is a development charge payable on a planning permission granted for a specified period of time, *e.g.*, five years?

Yes. The amount would presumably be less than if the permission were unconditional.

7. What is the maximum size of a garage that can be erected in the curtilage of a dwelling-house without incurring a development charge?

1750 cubic feet or 10 per cent. of the size of the dwelling-house, whichever is the greater; see *ante*, p. 221.

8. Ditto for greenhouses?

No maximum size; see the Development Charge Exemptions Regulations, 1948, Sched. Class 5; *ante*, p. 238.

9. Can a second-hand furniture shop be changed into a hand laundry without paying a development charge?

This can only be answered by applying the facts in each case to the Use Classes for Third Schedule Purposes Order, 1948: see pp. 145, 146, 148, *ante*. If the cases do not fall within the same Use Class then it must be considered whether there is a material change.

10. A shop selling motor parts (not a car showroom) with a petrol pump attached, living accommodation above and at the rear a yard with two sheds for repairing cars. Can

(a) the shop be changed to a builders' showroom? (b) the rooms above converted to flats? (c) the rear yard changed to a builders' yard? All without paying a development charge?

(a) Probably not. This may depend on whether a builders' showroom is used for carrying on the sale of goods by *retail*.

(b) Probably yes; see 1947 Act, Sched. III, para. 2.

(c) Yes.

Ministry of Town and Country Planning Circulars

[continued from p. 172, *ante*]

Circular No. 46, dated June 15, 1948. Commentary on the Transfer of Property and Officers and Compensation to Officers Regulations, 1948 (1d.).

Circular No. 47, dated June 16, 1948. Commentary on the General Development Order, 1948 (1d.).

Circular No. 50, dated June 15, 1948. Notifying the making of the Development Charge and the Development Charge Exemption Regulations, 1948 (1d.).

Circular No. 51, dated June 28, 1948. Notifying the making of the General Regulations, 1948 (1d.).

Circular No. 52, dated June 30, 1948. Notifying the making of the Tree Preservation Order Regulations, 1948 (1d.).

Circular No. 53, dated June 30, 1948. Notifying the coming into operation of the Act (1d.).

Circular No. 54, dated June 30, 1948. Giving preliminary information as to the Grant Regulations (1d.).

Ministry of Health Circulars

Circular 118/48. Simplified procedure to be adopted by local authorities in seeking consents for redevelopment schemes.

Circular 129/48. Guidance to local authorities on land transactions under the Act.

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"*Planning Law*" *Notes*

The Explanatory Pamphlet of the Central Land Board on builders' near ripe land is printed in full on p. 394, *post*. The kindred subject of single plot building sites of private owners is the subject of a statement by the Board printed at p. 393, *post*. No statement has yet been issued on the subject of "outline" development and readers are referred to the note thereon on p. 391, *post*.

The Central Land Board state that many people believe that if planning permission was obtained before July 1, 1948, a development charge is not payable for development begun after that date. This, as readers of this Journal are well aware, is not by itself a qualification for exemption. To be free from development charge the land must be certified as "dead ripe" under s. 80. Alternatively there may be relief under the near ripe scheme or under the single plot building scheme (see above).

The procedure adopted by the Central Land Board for handling applications for the determination of development charges is, in outline, as follows:

1. On receiving the application from the local planning authority, the Central Land Board will send a receipt to the applicant.
2. The application will be checked in the Regional Office of the Board to see that
   (a) documents are in order;
   (b) the applicant has an interest in the land;
   (c) development is imminent.
3. If the application is properly documented and if a charge is presumably payable the application will be sent on to the District Valuer who will, within fourteen days of its receipt by the Board, invite a discussion by the applicant or his adviser.
4. Unless the District Valuer notifies the applicant in writing that there will be delay in assessing the development

charge or unless the applicant notifies the District Valuer in writing that the matter need not be dealt with immediately, the District Valuer will communicate a figure for the development charge within one month of the application being received by him.

5. A specially speedy procedure is available in urgent cases.

"Apart from isolated transactions where the purchasers concerned have compulsory powers, the professed object of the Act to secure that land shall be freely transferred at its existing use value is just not being achieved. Recent transfers of which I have knowledge have all proceeded on the basis of the purchaser paying what was thought to be a fair pre-Act price and taking an assignment of the vendor's right to claim compensation for depreciation arising as a result of the Act. Owners who have themselves paid a building price for land which, to the ordinary individual, was and is ripe for development are unwilling to part with it for a fraction of the price given for it and wait five years for some undefined measure of compensation. It is true that there is a statutory remedy in such cases, but the widespread use of compulsory purchasing powers by local authorities at existing use values would at once create a sense of injustice".

The foregoing extract from a letter by Mr. Charles Greenwood, Solicitor, Chairman of the Planning Committee of the Soke of Peterborough, published in *The Times* of August 19, states very clearly what is troubling the minds of many professional advisers. The legal position is stated with precision in the article "Existing Use Value—A Warning", at p. 382, *post*, which is fully supported by the Circular 129/48 issued to local authorities by the Minister of Health, in which it is stated that the Minister will be unable to approve for loan sanction the payment of prices which are at all above the District Valuer's figure. Nor will he sanction a loan for part of the cost if the local authority have paid an excessive price in total.

Nevertheless, the imponderable human factor deserves the most anxious consideration by those in authority.

Control of Land Use

By DESMOND HEAP, LL.M., L.M.T.P.I.

Comptroller and Solicitor to the Corporation of the City of London

I. Planning Law and the Meaning of "Development" (*ante,* p. 7).
II. Planning Law and Development Permission (*ante,* p. 63).
III. Planning Restrictions and the Recovery of Compensation (*ante,* p. 124).
IV. Further Observations on the Meaning of "Development" and the Need for and Methods of Obtaining Planning Permission therefor (*ante,* p. 208).
V. Planning and the Designation, Development and Disposal of Land by Local Authorities (*ante,* p. 292).
VI. **Advertisements and the Preservation of Trees, Special Buildings and Amenities.**
VII. Planning Control and its Enforcement.

VI. Advertisements and the Preservation of Trees, Special Buildings and Amenities

1. In order that the recently published Town and Country Planning (Control of Advertisements) Regulations, 1948 (SI 1948, No. 1613) (summarised at p. 332, *ante*), may receive comment in this Journal at as early a date as possible, it has been decided to interchange the last two articles in this current series of seven under the general heading of "Control of Land Use".

Accordingly, the present article becomes number VI in the series and in the article it is proposed to write in turn of advertisements, the preservation of trees and special buildings and the control of waste land, all of which matters may be said to have as their common denominator the preservation of amenity.

The Control of Advertisements

2. The Town and Country Planning (Control of Advertisements) Regulations, 1948, is a substantial document containing thirty-four regulations and four schedules. From an amenity point of view these regulations are of the greatest importance.

In the present article it is proposed to deal with them in general terms but their intricacy and importance justify more incisive treatment and, accordingly, it is hoped in later issues of this Journal to devote further consideration to the matter of advertisements and amenity.

The sections of the 1947 Act relating to the control of advertisements are ss. 31 and 32 which are largely enabling provisions under which the Advertisements Regulations have been made. As to the sections themselves, it needs only to be mentioned in this present article that in so far as the display of advertisements constitutes development (as to which particular reference may be made to s. 12 (4) of the 1947 Act), no application for planning permission in respect of such development is required provided the display of the advertisements is in accordance with the Advertisements Regulations (s. 32 (1)). Any person guilty of an offence against the Advertisements Regulations by displaying an advertisement in contravention thereof is liable to a fine not exceeding £50 or, in the case of continuing offence, 40s. per day (s. 32 (3)). With respect to *onus probandi* it is to be noted that a person is deemed to display an advertisement (a) if the advertisement is displayed on land of which he is either the owner or the occupier; or (b) if the advertisement publicises his goods, trade, business or other concern, but it is open to any such person to prove that the offending advertisement was displayed without his knowledge or consent in which case he will not be guilty of an offence (s. 32 (4)).

3. Turning now to the Advertisements Regulations themselves (they came into force on August 1, 1948 (reg. 1)), the word " advertisement " is widely defined by the regulations and should be specially noted. It means " any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction (excluding any such thing employed wholly as a memorial or as a railway signal), and without prejudice to the foregoing provision includes any hoarding or similar structure used or adapted for use for the display of advertisements, and references to the display of advertisements shall be construed accordingly " (reg. 2 (1)).

The extent and application of the Regulations is dealt with in reg. 3 whereby they are to apply to the display on land (and " land " includes (reg. 2 (1)) buildings and land covered with water and " building " includes (*ibid.*) any structure or erection or any part of a building structure or erection) of all advertisements (reg. 3 (1)) subject to four exceptions as follows :—

(a) advertisements on "enclosed land" (as specially defined in reg. 3 (2) (*a*)) and not readily visible from outside the enclosure or from within any such part of the enclosure as carries a public right of way or to which the public have access;

(b) advertisements within a building subject, however, to the special control provided by reg. 27 with respect to certain advertisements displayed within a building but visible from outside the building;

(c) advertisements displayed upon or inside a vehicle; and

(d) advertisements incorporated in, and forming part of, the fabric of a building.

4. It is to be noted that for the purpose of (c) of the foregoing exceptions "vehicle" means (reg. 3 (2) (*b*)) a vehicle normally employed as a moving vehicle on a roadway or a railway and also a vessel normally employed as a moving vessel on an inland waterway. Thus omnibuses (provided they keep moving) can carry advertisements both within and without if the managers of these peripatetic vehicles think fit. But if they ultimately come to rest (as, regrettably, some of them used to do) in the form of temporary dwellings, they will, on thus ceasing normally to move, come within the control of the Advertisements Regulations. It is, however, to be hoped that a better use of planning control in the future than some authorities have exercised in the past will preclude any further littering of the countryside with the mouldering remains of omnibuses, tramcars and so forth, whether with or without the additional complication of decaying advertisements displayed on their exterior.

5. Control under these Regulations over the display of advertisements can be considered mainly under two heads, namely, control within areas of special control, and control outside such areas.

The definition of an area of special control is dealt with in reg. 10 and the Second Schedule to the Regulations and it is for a local planning authority to take the initiative in defining an area of special control. All local planning authorities are under a duty to consider such definition now (reg. 10 (1)). An area of special control is defined in an Order made by a local planning authority and approved by the Minister (reg. 10 (4)) and within such an area the general rule will be that no advertisements whatever may be displayed. Such advertisements as are displayed will form exceptions to this general rule (reg. 11).

6. With respect to areas which are not areas of special control the general rule is that no advertisements may be displayed without consent which may be either express consent granted by a local planning authority or by the Minister (reg. 5 (1)) or " deemed consent " (reg. 5 (2)) that is to say, consent which is deemed to be granted by the Regulations themselves. Deemed consent is applicable to all advertisements falling within Part IV of the Regulations.

7. Advertisements falling within Part IV of the Regulations are firstly those coming within the four specified classes given in reg. 12 which covers the following :—

Class I.—Functional advertisements of local authorities, statutory undertakers and public transport undertakers (*e.g.*) bus stop signs, signs indicating the way to railway stations, museums, art galleries, etc.

Class II.—Miscellaneous advertisements relating to premises on which they are displayed (*e.g.*), professional, business or trade plates attached to premises where the profession, business or trade is carried on.

Class III.—Certain advertisements of a temporary nature (*e.g.*), " For Sale " and " To Let " boards.

Class IV.—Advertisements on business premises relating wholly to the business carried on or to the goods sold or the services provided, together with the name and qualifications of the person carrying on the business, or selling the goods or supplying the services.

Any advertisement normally falling within one or other of the foregoing classes can be removed from such class by direction of the Minister (reg. 13).

8. Advertisements falling within Part IV of the Regulations are, secondly, those coming within reg. 14 relating to (a) pending parliamentary or local government elections; (b) advertisements displayed under statutory obligation (*e.g*) advertisements relating to the making of compulsory purchase orders under the 1947 Act; and (c) advertisements in the nature of traffic signs such as (the so called) robot lights and also " Halt " and " Turn Left " signs.

The four standard conditions given in the First Schedule to the Regulations will apply, obligatorily, to all advertisements displayed with deemed consent (reg. 6).

A local planning authority, where it appears expedient for them so to do, can require that any advertisement (other than those included in reg. 14 relating to election notices, statutory advertisements and traffic signs) displayed with deemed consent shall be made the subject of an application to the local planning authority for their express consent to the continuance of the display of the advertisement (reg. 8). Applications for express consent are made (reg. 15) on forms to be obtained from the council with whom the application is to be lodged, such council being :—

(a) where the land is within the administrative county of London—
  (i) in the case of land in the City of London, the Common Council of the City;
  (ii) in the case of other land within the administrative county, the London County Council or the metropolitan borough council for the area in which the land is situated; and
(b) where the land is outside the county of London, the county borough council or county district council for the area in which the land is situated.

9. In considering an application for express consent a local planning authority is to consider only the interests of amenity and public safety (reg. 4), is under a duty to consult certain other authorities before arriving at a decision (reg. 16) and, subject to these requirements (a) may grant consent subject to the three obligatory standard conditions set out in Part I of the First Schedule to the Regulations together with such additional and optional conditions (if any) as they think fit to impose, or (b) may refuse consent (reg. 17).

10. Every grant of express consent must be for a fixed term which, in general, will be three years (reg. 18 (1)). Express consent cannot be granted for a term longer than three years without the approval of the Minister (reg. 18 (2)). The grant or refusal of express consent must be in writing together with (in the case of a refusal or a grant subject to conditions) the reasons for the decision (reg. 19 (1)). A local planning authority must give their decision on an application for express consent within two months unless such period is extended by agreement in writing made between the authority and the applicant (reg. 19 (2)), and if the decision is not given in the beforementioned period the application is to be regarded as having been refused (reg. 20 (5)). Every local planning authority is to keep a register containing particulars of their decisions on applications for express consent (reg. 31).

An applicant for express consent who is aggrieved by the decision of a local planning authority refusing consent or granting the same subject to conditions may appeal to the Minister (reg. 20 (1)) within one month (reg. 20 (2)) from the receipt of the notification of the local planning authority's decision. The word "month" is not defined in the Regulations but, by virtue of reg. 2 (3) it has the same meaning as in the Interpretation Act, 1889, under which it means one calendar month. The decision of the Minister on an appeal is final (reg. 20 (6)).

11. Provision is made by the Regulations for enforcement of the control over advertisements provided by the Regulations (regs. 23 and 24) and also for the revocation or modification of any grant of express consent to the display of an advertisement (regs. 21 and 22). Any person displaying an advertisement so as to contravene the Regulations is liable to a fine of £50 and in the case of a continuing offence 40s. per day (reg. 9), and in this connection the observations made previously in this article as to when a person shall be deemed to display an advertisement (s. 32 (4) of the 1947 Act) should be noted.

12. A period of grace is given with respect to "existing advertisements", that is to say, advertisements displayed on August 1, 1948. They are totally exempt from the provisions of the Regulations for a period of three months from August 1, 1948. Thereafter they may continue to be displayed without express consent but subject (a) to the four standard conditions set out in the First Schedule to the Regulations, and (b) to any notice served by a local planning authority requiring an application for express consent to their display to be made (reg. 7 (1)). No such notice requiring application to be made for express consent can, however, be served in the case of existing advertisements which were being displayed on January 7, 1947 (the date the Act was first published as a Bill), until August 1, 1951 (reg. 7 (2) (*a*)), and in the case of other existing advertisements (*i.e.*, advertisements first displayed at some time after January 7, 1947 and before August 1, 1948) until August 1, 1949[1] (reg. 7 (2) (*b*)).

Any person who is required to remove an existing advertisement *which was also being displayed on January 7, 1947*, or who is required to discontinue the use for the display of advertisements of any site which was being used for that purpose on August 1, 1948, may claim compensation under s. 32 (2) of the Act with respect to any expenses reasonably incurred by him in carrying out works necessary in order to comply with such requirements. The claim must be submitted in writing to the local planning authority within six months of the completion of any such works (reg. 30 (1)).

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[1] In the summary of the Advertisement Regulations, in line 18 on p. 333, *ante*, "August 1, 1948" is a misprint for "August 1, 1949".

13. The Regulations contain further provisions dealing (as special cases) with the display of advertisements by local planning authorities (reg. 25), advertisements relating to travelling circuses and fairs (reg. 26) and advertisements displayed within buildings (reg. 27). The Regulations also carry a provision (now customary in planning law) empowering the Minister to call up for decision by himself (instead of by a local planning authority) any matter requiring decision under the Regulations (reg. 28).

[*To be concluded*]

Existing Use Value—A Warning

By E. J. Rimmer, Barrister-at-Law, and
E. C. Strathon, F.R.I.C.S.

There is ample evidence to show that purchasers of land after July 1, 1948, are still disregarding the warnings given by the Minister, by the Chairman of the Central Land Board and by this Journal to the effect that the value of undeveloped land purchased after July 1, 1948, is generally no greater than its value for its undeveloped existing use and the value of developed land is now no greater than its value for its existing development and use subject only to the very limited Third Schedule developments.

The strongest evidence is furnished by a paragraph in the *Estates Gazette* of July 17, 1948, reporting the sale of undeveloped land at Hove at which the auctioneer warned the bidders that the vendor retained the claim for compensation for loss of development rights and that the reserve price had been fixed in relation to the value of the land for its existing use, namely, allotment gardens. Notwithstanding this announcement, the sale was concluded at a bid equivalent to £600 an acre.

Further evidence is to be found in letters addressed to the Editor of this Journal, amongst which the following is an extract : " I act for owners of a partially developed residential estate who have in the past spent large sums in laying out roads, putting in services, etc. . . . Since the slight easing in the situation with regard to building licences we have received a number of inquiries from prospective purchasers for building plots, who say they are prepared to pay £5 per foot frontage and bear the development charge. . . ."

So long as the Act remains in its present form sales and offers to buy undeveloped land on the basis that it has a building value today can only be due either to ignorance of the purchaser (whom this Journal has endeavoured through six issues to enlighten) or to a determined scepticism on his part that the Central Land Board are really going to collect, by a development charge, 100 per cent. of the building value of the land from the person who builds upon it.

In the light of the above examples may we reiterate—

A. That as from July 1, 1948, all development and redevelopment value in " land " (which includes buildings), with the exception of the very limited values to be attributed to Third Schedule developments, have passed from the owner to the State (*ante*, p. 16).

B. That the Governing Principle which has been laid down by the T. & C. P. (Development Charge) Regulations, 1948, for determining whether any and if so what development charge is to be paid as a condition of development is—

" Development Charge shall be determined so as to secure, so far as practicable that land can be freely and readily bought and sold or otherwise disposed of in the open market at a price neither greater nor less than its value for its existing use " (*ante*, pp. 241, 242).

These statements are so clear that they should have removed any doubt in the minds of those dealing in the property market as to the intentions of the Government and the Central Land Board in the administration of the Act.

As it is the purpose of this Journal to remove any doubts there may be in the minds of the public and of those who advise them as to any question affecting their interests, we have, at the request of the Editorial Board, sought in the following four paragraphs to state for the purpose of emphasis and illustration what we believe to be the effect of the Act and Regulations which have so far been published upon the value of land in the hands of a purchaser after and of the owner at July 1, 1948.

1. That the value to a purchaser after July 1, 1948, of land which has not previously been built upon or otherwise used for a profitable purpose *wherever it may be and however well served it may be by roads, sewers and other services* is no greater than the value of a similar piece of land (without roads, sewers and services) in any other part of the country subject only to such additional value it may have

(a) for use for any class of agriculture and the prospects of building upon it agricultural buildings or houses to be occupied by persons employed in agriculture;

(b) for use by the owner of contiguous land as an amenity to his property or for extending his property or its use by one-tenth of the cubic content of contiguous buildings or one-tenth of the area of the land so used;

(c) for display of advertisements subject to the absolute control and veto of the Planning Authority;

(d) for use as camps and certain other temporary purposes;

(e) for spreading of dredgings with permission of the Planning Authority;

and if permission for the development has already been granted by the Planning Authority the value resulting from such development if it will escape development charge under Part VIII of the Act (*ante*, pp. 304–305).

2. That the *value to a purchaser after July 1, 1948*, of land which is already built upon or used for some profitable purpose is no greater than the value it has for the existing development and use (or in the case of war-damaged land for its pre-damage development and use) subject again to such additional value, if any, as may be due to the prospects of developments or changes of use which will not attract a development charge (*ante*, pp. 304, 305).

3. That the *value to a purchaser after July 1, 1948*, of land on which buildings have been destroyed by war damage, fire, etc., is the value attaching to the prospects of rebuilding and extending within the limits of 10 per cent. of their cubic content *and is not* the value attaching to the prospects of a new type of development on the same site or over a number of contiguous sites.

4. That the *value to the owner on July 1, 1948*, of the

land referred to in paras. 1, 2 and 3 is the same as to the purchaser *plus* the owner's prospects of obtaining compensation out of the £300 million global sum for the loss of value of his land due to the coming into force of the Act and his claim for this must be made to the Central Land Board not later than March 31, 1949.

In conclusion we may add that since the owner of land on July 1, 1948, will be entitled to make his claims on the £300 million global sum on the basis of his full loss of development value there are no grounds for belief that the Central Land Board will not in turn seek by development charges to recover the full benefit that the developer of land after July 1, 1948, obtains from that development.

"Temporary Use and Normal Use"

By T. A. Blanco White, Barrister-at-Law

Under s. 12 (5) (*a*) of the Town and Country Planning Act, 1947, there is no need to obtain planning permission (nor, consequently, to pay development charge), " in the case of land which, on [July 1, 1948], is being used temporarily for a purpose other than the purpose for which it is normally used, in respect of the resumption of the use of the land for the last-mentioned purpose ". This clause is important, for it offers one of the main escape-holes in the development-charge provisions of the 1947 Act. The purpose of the present note is to suggest that this escape-hole is larger than it looks at first glance.

Consider these examples. First, a shop (without living accommodation attached) which on the appointed day was being used as a dwelling and not as a shop. Second, a large country house which for some years before the War was used as a school, and on the appointed day was used as offices by the remnant of a war-time Ministry. Third, the site of a blitzed factory; on the appointed day, part was covered with pre-fabricated houses, and more pre-fabricated houses were beginning to be assembled on the remainder. Are these "temporary uses" within s. 12 (5) (*a*), and if so, what is the "normal use" of the land?

The first question then is: what does "temporary" mean? The answer seems to be: it is the opposite of permanent and habitual, and that is all. Thus, in a rather different connection, a Court has described[1] as "use for a temporary purpose", the use of an artificial watercourse to supply a water-mill: it was temporary, because the watercourse would no longer be wanted if the mill were to go out of use. "Temporary", said the Court, did not mean necessarily for a few years only; it meant something that "may, within the reasonable contemplation of the parties, come to an end some day". In the same way, the term "temporary nuisance" has been used to describe a nuisance that does not injure the reversion and so gives no right of action to the reversioner: as for instance,[2] a nuisance by the noise and vibration of machinery: for the machinery might be stopped at any time. So also it is clear that (for bye-law purposes) a pre-fabricated house is a "temporary building". It is no doubt meant to stay where it is until it falls down, but it might be disassembled and taken away.[3] Indeed, "temporary houses" is the standard official jargon for such buildings.

Clearly then the word "temporary" is wide enough to be capable of including all our examples. The ambit of the clause hole is in fact chiefly restricted by the phrase "the purpose for which it is normally used".

The word "normal" is a fairly recent addition to the Civil Service vocabulary, and has seldom been used in statutes and seldom interpreted by the Courts. Almost the only case upon it,[4] turned on the meaning of the phrase "normal working of the contract". The Court received, and acted upon, evidence as to the way in which contracts of that type were usually worked. The question in that case might well have been put: how must the parties have expected that the contract would be worked? So, on s. 12 (5) (*a*) of the 1947 Act, the question may probably be put as follows: Consider the land concerned as at the appointed day. Disregard abnormal circumstances (as distinct from permanent peculiarities of that land)—whether general, as the aftermath of War, or special to that land. How might it have been expected that the land would be used? The answer is the "normal use" of the land.

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[1] *Burrows* v. *Lang*, [1901] 2 Ch. 502 at 508.
[2] *Jones* v. *Chappell* (1875), L. R. 20 Eq. 539.
[3] Cf., for instance, *Gumbrell* v. *Swale R. D. C.*, [1936] 3 All E. R. 935.
[4] *Pool Shipping* v. *London Coal Co.*, [1939] 2 All E. R. 432.

The problem is not quite as easy as that, for two reasons. First, only "resumption" to normal use is protected: a use to which the land has never been put is consequently not within the clause. Secondly, the words are "the purpose for which it is normally used"; this implies that in some sense the normal use must be one that is continuing. A rough test is probably this: Was the land used for its supposed "normal purpose" up to the time when abnormal conditions started, and will that normal use be resumed if and when the abnormality ceases? If so, the land is within the section.

Our examples may now be dealt with quite shortly. First, the shop. The questions to be asked are: Was it ever used as a shop (if not, it is outside the clause)? Is it still, as far as its structure goes, a shop, or has it been converted into a dwelling; and if converted, is the conversion permanent in character or merely temporary? Why is it used as a dwelling? Because of abnormal conditions—war-produced housing shortage or war-time shopping slump, for instance—or because some peculiarity—such as wrong siting—makes it habitually unsuited for use as a shop? Finally, was it used as a shop at the time when conditions became abnormal, and if these were normal times would it be so used now? In most cases, the answers to these questions will be such as to bring the shop within s. 12 (5) (*a*), if the views expressed above are correct.

Secondly, the country house. Clearly the present use is temporary. The question is, what is the normal use? Almost certainly, it is use as a school; but there might be cases in which it could be said that this was a temporary abnormal use too, and that the building was normally used as a country house for living in.

Finally, the blitzed factory site. If the factory building was ordinarily used as such up to the War, clearly that is the normal use of the land. The prefabricated houses are almost certainly temporary houses, and the use of the land as a site for them a temporary use within our clause. The second part of this example conceals a trap that must be watched for. Use of the land for building operations is not "use" within the 1947 Act (s. 119 (1), definition of "use"); that part of the site in use on the appointed day for the assembly of further houses is consequently not "in use" at all within the Act. The relevant clause is therefore 12 (5) (*c*) and not

12 (5) (*a*), and the " existing use " of that part of the site is use for a factory—provided the factory was occupied since January, 1937 : see s. 12 (5) (ii).

The matter may consequently be summarised as follows. If on the appointed day the land was being put to an unexpected use; if that use could be stopped and might well be stopped at some future date; if it was started by reason of abnormal conditions; if when circumstances became abnormal (however long ago that was) the land was being put to another use, and would be put to that other use again now if circumstances were to become normal—then that other use may be resumed without planning permission and without payment of development charge.

In many cases, this sort of question will be suitable for raising by an application (under s. 17) for a decision whether planning permission is required for resumption of the earlier use. In due course no doubt a series of decisions by the Minister on s. 17 appeals will give rise to a practice as to the application of s. 12 (5) (*a*). But the last word rests with the Courts.

Planning Control in Relation to Registered Property[1]

By THEODORE B. F. RUOFF, a Solicitor of the Supreme Court

1. The purpose of this article is to supply a broad and brief answer to the question : How does the Town and Country Planning Act, 1947, affect land of which the title is registered under the Land Registration Acts, 1925–1936?

Possibly the blunt reply that the 1947 Act affects registered land to the same extent and in precisely the same ways as it affects unregistered land may seem to beg the question. It is, however, desirable to make that point because the 1947 Act, like the Land Registration Acts, applies to all land in England

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[1] Note by Managing Editor. This invaluable article has been contributed unofficially by a member of the staff of H. M. Land Registry. It does not necessarily express the view of the Editorial Board.

and Wales (s. 120), and it does not attempt to differentiate between land of which the title is, and is not, registered. Any such distinction is unnecessary because land registration is not an independent branch of the law of real property but merely an alternative machinery for dealing with *title*, which is acquired, is sustained, is proved, is transmitted, and devolves by simpler methods than that of unregistered land. But the *enjoyment* of the land may be identical in each case. A reference to the Act of 1947 shows, not only from its preamble, but also from the whole purport of its 120 sections that it is concerned with the physical use and development (*i.e.*, the enjoyment) of land as described in s. 12, further explained in s. 119 and the Third Schedule, and qualified in orders made under it (see the Use Classes Order, 1948, *ante*, p. 148, and the Use Classes for Third Schedule Purposes Order, 1948, *ante*, p. 148) and not with questions of title. That is not to deny that the practitioner who is investigating the title to land will simultaneously investigate the character of its owner's enjoyment (as he has long been accustomed to do) and that in doing so he will be materially influenced by the provisions of the new Act.

2. Hitherto planning has clearly been outside the scope of the registers of title. Restrictions, proposals, orders, and the like that, in favour of the authorities responsible for planning, regulated the use of land were, for the most part, discoverable, and discoverable only, by searches for local land charges or by inquiries of the local authority. If, *e.g.*, a resolution for a town planning scheme was duly registered as a local land charge, a prospective purchaser was bound by it whether or not he had made a search and so discovered it (*Re Forsey and Hollebone's Contract*, [1927] 2 Ch. 379). But failure to register such a matter inevitably meant that it was void against a purchaser of the legal estate for money's worth (Land Charges Act, 1925, s. 15 (1)), whether or not the title to the land happened to be registered (*ibid.*, s. 23 (1)), except in the unlikely event of its being protected by notice, etc., on the register. It was a simple matter for a proposed purchaser of registered property to ascertain what he might, and what he might not do with his land and, in practice, he adopted the same precautions as he would have done in the case of unregistered property. He will still do so, but the number and variety of his inquiries have been multiplied, and some important items of planning control are not now expressly made registrable as local land charges.

3. Undoubtedly, the first question that will spring to the practitioner's mind will be: what new interests, rights and claims (if any) will be protected on a registered title? The ground may be cleared by stating dogmatically that, except for such things as a legal charge that might be given as security for a development charge under s. 71, or an acquisition of land—compulsorily or by agreement—to which the normal rules will apply, none of the many and varied matters that arise under the Act of 1947 amount to legal estates, interests or charges (as defined, Law of Property Act, 1925, s. 1). They do not, therefore, qualify for substantive registration (Land Registration Act, 1925, s. 2 (1)). Secondly, it is palpable that no minor interests (defined, *ibid.*, s. 3 (xv)) arise under the 1947 Act. Thirdly, local land charges (see the Land Registration Act, 1925, s. 3 (ix); Land Charges Act, 1925, s. 20 (7)) may be protected on the register by notice under s. 49 (1) (*c*) of the former Act. But it can scarcely be doubted that, having registered local land charges when requisite, planning authorities will be too absorbed with their normal work to dissipate energy by duplicating information unnecessarily in this way. For the same reason, it is unlikely that the authorities will seek to register a caution under s. 54 *ibid.*, so as to ensure that they are notified of a pending change of ownership or other disposition. The identity of the actual owner is surely a matter of indifference to them as a rule. The other forms of protection, *viz.*, restrictions (*ibid.*, s. 58) and inhibitions (*ibid.*, s. 57) are scarcely applicable.

4. It is apparent, therefore, that any right, interest or claim of a planning authority under the 1947 Act must be either an overriding interest, or else an interest altogether outside the scope of registration. The former will not normally, and the latter cannot in any circumstances, be protected on the register of title. Next month it will be seen that the only overriding interests that are likely to be entered on the register are certain local land charges. The impact of the Act upon registered titles will then be discussed in some detail.

[*To be concluded*]

"Outline" Development

By J. Stuart Daniel, Barrister-at-Law

The effect of the Act of 1947 upon the "outline" developer, that is upon a person who services a site with sewers and roads but stops short of completing the development by building, is anomalous and obscure.

The difficulty arises from the operation in practice, so far as it can be foreseen, of the principle that land is to change hands freely at existing use value. Perhaps it can be seen most clearly in the case of compulsory purchase of a site so developed. Compensation will be assessed in accordance with s. 51 (2) of the Town and Country Planning Act, 1947, on the assumption that planning permission would be granted for Third Schedule development only. What then is the value of the site? It is submitted that it must be its agricultural value only, or its value for the purpose, whatever it was, for which it was used before the sewers and roads were made. For although the developer may have spent large sums on servicing, and although this will represent a considerable part of the expense of the development as a whole, the value attributable to these operations depends entirely upon the prospect of building. The roads and sewers are of use only if there are houses which they can benefit, and contribute nothing or less than nothing to existing use value.

As regards sites which have been caught by the Act in this condition it has been indicated that owners will receive preferential treatment in the Section 58 Scheme. In the Lords' debate on the Development Charge Regulations, Lord Henderson said (see Official Report, June 3, 1948, col. 225): "I think it will be dealt with in a somewhat similar way to the method adopted for near-ripe land".

So far so good, but what of the future? It is difficult to see how a separate stage of development of this kind can ever be carried out by a separate undertaker, except at a loss. Though the operation will constitute a development and a development charge will in theory be payable, the charge should, on the above reasoning, be nil, since the value of the land will not, it seems, be increased by the permission.

But even so, if the land is to be sold on completion of the "outline" development at existing use value the undertaker could not recover the cost of his operation, and certainly could not make a profit. It is difficult to believe on the face of it that a builder would not pay more in the open market for land which has already been serviced than for ordinary agricultural land. But it must be remembered that permission to build, that is, to complete the development, will bring into play the value of the servicing, so that the development charge payable on the building operations will, it is submitted, be correspondingly increased.

It seems to follow that unless the Act is modified or its operation in practice somehow eased to meet the circumstances, this particular type of development can only, in future, be carried out by a developer who is himself going to round off the operations by building.

Control of Open Ground under s. 33 of the Town and Country Planning Act, 1947

UNDER s. 33 of the Town and Country Planning Act, 1947, if it appears to a local planning authority that the amenity of any part of their area or an adjoining area "is seriously injured by the condition of any . . . open land in their area", they may serve a notice (corresponding to an enforcement notice) requiring the abatement of the injury. It was pointed out in this Journal (*ante*, p. 90, para. 14) that these words give the authority a discretion, not subject to judicial control, to treat as seriously injurious any condition of open land they wish. This proposition now, however, requires modification, by reason of para. 7 (2) of the Town and Country Planning (General) Regulations, 1948, (p. 318, *ante*).

It is true that the local planning authority can lawfully serve a notice under s. 33 whenever they think fit, but substantial powers of control have been made available to the Court of summary jurisdiction hearing an appeal against the notice. First, the Court is to quash the notice "if satisfied that the condition of the land is such as results in the ordinary course of events from operations or a use for which permission was granted " under Part III of the 1947 Act. This comes very close to substituting the Court's discretion for the local planning authority's, except in relation to unused or derelict land. Secondly, the Court is to vary the notice, if satisfied that its requirements " exceed what is necessary for abating the injury ". This second provision in effect gives the Court power to consider whether there is any injury to amenity or not.

On the question whether, given that there is an injury to amenity, it is " serious " enough to justify action under s. 33, the local planning authority remain the sole judge. It might at first sight appear that the point was covered by the decision in *More O'Ferrall, Ltd.* v. *Harrow Urban District Council*, [1947] K. B. 66, but this is not so; although that case was decided on a section of the 1932 Act dealing in almost identical words with those of the present s. 33, with serious injury to amenity caused by advertisements, the power of the Court under the 1932 Act was different. The Court was, in fact, expressly required by that Act to quash the notice if satisfied that the amenities concerned were " not seriously injured ".

T. A. B. W.

Building Sites

Single Plot Owners

Many people who bought plots of land at " building-site prices " before the Town and Country Planning Bill was introduced in January, 1947, have asked the Central Land Board if they will have to pay a development charge when they build.

The Board now announce (July 30, 1948, CLB/4) arrangements which affect private owners who owned single plots before January 7, 1947. They will be entitled, if they start to build a house on the plot for their own occupation on or before January 7, 1952, to a payment from the £300 million fund equal to the development value in the land for the erection of a house. This should mean, in the absence of any marked change in market values, that the payment from the fund will broadly cover the development charge.

This payment will not be available until after the scheme for payments has been made and approved by Parliament, but these owners will be able to set off their development charge against it. They must, of course, put in a claim for a payment before March 31, 1949, and the Board advise them to do so as soon as possible.

These arrangements, which the Central Land Board are now authorised to make, give effect to statements made by Ministers in Parliament during the passage of the Bill.

"Near Ripe" Land

Central Land Board Explanatory Pamphlet on Builders' Near Ripe Land

Form S.1A. (N. R.)

The provisions of the Town and Country Planning Act, 1947, regarding development charges and payments for depreciation from the £300 million fund, which are dealt with in the Central Land Board pamphlets D.1.A and S.1.A. repectively, will affect many builders with land which is ready for development. Development on a strictly limited category of such land, defined in s. 80 of the Act and termed " dead-ripe " will, if the Minister so certifies, be exempted from development charge. The Minister has promised supplementary arrangements for builders' land which is termed " near-ripe ".

This pamphlet is intended to give guidance to building firms on these supplementary arrangements.

1. *What land is affected?*

Freehold or leasehold land held (or under binding contract for purchase or lease) for the purposes of building development by a registered builder[1] on January 7, 1947, the date of the introduction of the Bill, and which he continues to hold on July 1, 1948, and in respect of which he has made a claim on the £300 million fund in due time. If the land was not in the builder's ownership on July 1, 1948, because it had been acquired from him by a public authority on or after August 6, 1947, at existing use value, it will also qualify.

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[1] A registered builder is one who has registered with the Ministry of Works under the Defence (General) Regulations, 1939, reg. 56 AB.

Where the land is held by an associated company, or by a director or partner, of a building firm, the Board are willing to consider the case on its merits. They will require to be satisfied that the land is held for the benefit of the building firm.

The Board may also consider land held by a registered builder on January 7, 1947, and which had passed to another registered builder before July 1, 1948, otherwise than by purchase.

2. *What is the nature of the arrangements?*

The claimant will be entitled, in respect of a prescribed "ration" of land which qualifies under para. 1 above, to receive as a payment from the £300 million fund a sum equivalent to the full development value of the land. The rest of his land, if any, will be eligible for ordinary treatment under the schemes for distribution of payments.

Further, if the builder wishes to develop land within the ration before June 30, 1953, by which date payments will be made, he will not be required to pay a development charge but may set off the charge against the sum due out of the £300 million fund until the credit has been exhausted. Interest will be payable by the builder on any charge offset in the same way as the Government undertakes to pay interest on the sum due from the fund. When payment is made, any balance due will be paid to him. If he has exceeded his credit, the builder will be required to pay to the Central Land Board any outstanding charge including interest.

Where a builder makes an application for determination of development charge, Question 26 of Form D.1[2] asks whether he is willing to pay development charge in a single lump sum before development is commenced. The Board will only set off the charge if it is clearly stated in answer to this question *either* that the land has been accepted as near-ripe by the Central Land Board *or* that application has been or will be made for the land to be treated as near-ripe.

If the builder asks the Board for a credit in respect of development charge before his claim to a ration has been accepted, he will be required to give a written undertaking that he will pay the charge including interest if his claim for a ration is refused or not fully substantiated.

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[2] The form of application for determination of development charge.

3. *How is the near-ripe ration calculated?*

The ration is arrived at by calculating the acres of land developed by the builder between 1934 and 1938 inclusive. He will be entitled to claim as his near-ripe ration an equivalent number of acres selected from his eligible land (see para. 1 above). In calculating the figure of the acreage the builder may refer to any building undertaken by him on his own land in those years or on land which he sold to a customer before building on it for him.

Where the land is held by an associated company, or partner or director, of a building firm, the ration claimed should be similarly calculated by reference to development between 1934 and 1938 undertaken by the building firm on land in the ownership of the company or individual partner or director.

If the builder was not building throughout those years, but can select a period of two years when he was doing so between January, 1937, and September, 1939, his average yearly output will be taken as a basis for the ration.

If the builder did not undertake any such development or can only refer to a period of less than two years the case will be referred to an advisory committee which is being set up to consider these and other doubtful cases. The committee will include members of the industry and officers of the Board.

4. *What land may be selected for the near-ripe ration?*

Any land, within the limits of para. 1, provided the selection follows the natural course of development or is merely "infilling" an uncompleted estate.

If an application has been made to the Minister of Town and Country Planning for a certificate under s. 80 of the Town and Country Planning Act, 1947, but his decision is not known, the selection of land for near-ripe treatment may provisionally include the land concerned.

5. *How can a claim for a near-ripe ration be made?*

If you wish to claim near-ripe treatment for any of your land, in completing the Central Land Board Claim Form (S.1.) you should answer "Yes" to Question 20 (*a*) (or Question 21 (*a*) in Form S.1/R or Question 18 (*a*) in Form S.1/P in the special cases where these forms are relevant) and send the form in to the appropriate Regional Office. You will then receive a supplementary form (S.1/N.R.) which you should fill in and return to the Board as directed on the form within three months of the date of receipt.

This pamphlet does not relate to any land in Scotland.

Valuation Fees

Scale of Fees for use in Connection with Claims under the Town and Country Planning Act, 1947, for the Depreciation of Land Values

Scale approved by a Joint Conference of representatives of the Royal Institution of Chartered Surveyors, the Land Agents' Society, the Chartered Auctioneers' and Estate Agents' Institute, and the Incorporated Society of Auctioneers and Landed Property Agents.

(*a*) The rates shown in the scale below must be treated as a general guide only, and should be applied with discretion. The intricacy and difficulty of the services rendered are likely to vary considerably, according to the type of property and other circumstances which may arise in a particular case. The rates of remuneration, therefore, should not be regarded as rigid, and if the scale fee in any given case appears too high or too low in relation to the work done, it should be adjusted to the circumstances.

(*b*) The fee in each case covers inspection, the completion of the relevant parts and the submission of the prescribed form, and, where possible, agreeing the claim with the appropriate authority, but is exclusive of services rendered to the claimant in connection with an appeal to any tribunal.

(*c*) A separate fee will normally be charged for each unit of claim.

(*d*) The fees shown below are in all cases exclusive of travelling and other expenses, disbursements, copies of documents and lithography.

Scale

1. *Where a claim is made:—*

5 guineas per cent. on the first £100 of the unrestricted value as settled with the Central Land Board or on appeal.

2 guineas	per cent.	on the next	£400
1 guinea	,,	,,	£500
½ ,,	,,	,,	£49,000
⅓ ,,	,,	,,	remainder

Notes:—

(i) Fees on the above scale are payable by the client, who shall be credited with any contribution towards such fees which may be recoverable from the Central Land Board. If, however, the contribution from the Board should be higher than the fee on the above scale (as may happen in exceptional cases) the fee payable by the client shall be the said contribution.

(ii) One-third of the estimated fee is payable when the claim is lodged, and the balance of the fee when the amount of the development value (i.e. the claim) is agreed with the Central Land Board or fixed on appeal.

2. *Where an agent is instructed and no claim is advised:—*

Fee by arrangement, depending on the extent of the responsibility involved and the other circumstances of the particular case.

Declaratory Orders

By J. Muir Watt, Barrister-at-Law

Declaratory Orders made under section 1 (1) of the Town and Country Planning Act, 1944: Effect of the Town and Country Planning Act, 1947.

A PROBLEM arises as to the precise effect of para. 17 of the Tenth Schedule to the Town and Country Planning Act, 1947. Ss. 1 to 14 of the 1944 Act were, it will be remembered, repealed as from July 1, 1948. Para. 17 of the Tenth Schedule, however, preserves the effect of a declaratory order made under s. 1 (1) of the 1944 Act before the appointed day. The paragraph provides that where such an order has been made, " the provisions of Part IV of this Act (*i.e.*, the 1947 Act) shall apply as if the land were comprised in an area defined by the development plan under Part II of this Act as an area of comprehensive development, and were designated as subject to compulsory acquisition under this Act by the appropriate local authority ". Is this sufficient to attract the provisions of s. 9 of the 1947 Act, which enable an owner after twelve years from the designation (eight years in the case of agricultural land) to bring matters to a head by requiring that his land should either be purchased or freed from the designation? It will be noticed that as from the appointed day s. 2 (4) of the 1944 Act is repealed, so that if s. 9 of the 1947 Act is not attracted by the above-quoted provision there is in fact *no* time limit upon the compulsory acquisition of land subject to a declaratory order which has been preserved in force by para. 17.

The opinion has been tentatively expressed[1] that para. 17 does attract the limits imposed by s. 9, but it is submitted that this view is questionable. Para. 17 says that " the provisions of Part IV " of the 1947 Act are to apply as if the land were designated under the Act. S. 9 is not in Part IV but in Part II. If, instead of the words " the provisions of Part IV of this Act ", the draftsman had used the expression " the provisions of this Act ", the position would have been different. In view of the express reference to Part IV, however, it is difficult to say that s. 9 is imported. No doubt it could be argued that the words " were designated as subject to compulsory acquisition " should be read in a liberal sense as meaning " were subject to all the incidents of designation under this Act including the power given to an owner to require his land to be ' undesignated ' if not purchased within a certain time ". It is suggested, however, that the strict interpretation given above is the correct construction.

Section 91 of the Act

THE difficulties of construing s. 91 of the Town and Country Planning Act, 1947 (land in process of compulsory acquisition), are not lessened by what appears to be a mistake in proviso (*a*) to sub-s. (4) of that section. That proviso reads as follows :—

> " Provided that—
>
> (*a*) the provisions of section fifty-three of this Act shall not apply for the purpose of calculating the

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[1] *The Town and Country Planning Act, 1947*, by Hill & Kerrigan, page 89.

> restricted and the unrestricted values of any interest acquired as aforesaid except in the cases provided by subsection (2) of that section, or by that section as extended by subsection (1) of section fifty-five of this Act."

The reference in the above proviso to sub-s. (2) of s. 53 has no intelligible meaning, and it is impossible to resist the conclusion that a reference to *sub-s. (3)* was intended. Sub-s. (2) of s. 53 deals with the special case where works other than works for making good the war damage have been carried out on war-damaged land. It only applies when the land falls within the general category described in sub-s. (1) and it deals with a special class of land within that general category. In other words, it deals with land which is of the general kind described in sub-s. (1) but which is subject to the additional complication of having had work carried out on it other than work for making good the war damage. If land falls within this special class it must also *ex hypothesi* fall within the general category, so that the exclusion of the provisions of s. 53 with the exception of sub-s. (2) does not make sense.

If the proviso had referred to sub-s. (3) of s. 53, instead of sub-s. (2), it would have been quite intelligible and would have been consistent with the reference in the same proviso to sub-s. (1) of s. 55. Both sub-s. (3) of s. 53 and sub-s. (1) of s. 55 deal with the case where an interest in land is acquired by agreement by a person authorised to acquire it compulsorily.

This raises the question of how the Courts would construe the proviso. The Courts can correct an obvious misprint [1]; but the mistaken reference in the above proviso is not so obvious. On the other hand, it seems impossible to give a meaning to it as it stands, and counsel may, if the question should come before the Court, manage to convince the Judge that it is only possible to make sense of the proviso by substituting " subsection (3) " for " subsection (2) ".

J. Muir Watt.

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[1] See *R.* v. *Wilcock* (1845), 7 Q. B. 317; *Re Boothroyd* (1846), 15 M. & W. 1; cf. the substitution by Fry, J. in *Laird* v. *Briggs* (1880), 16 Ch. D. 440 of " easement " for " convenient ".

Parliamentary Intelligence

Local authority development

In a written answer to a question by Brigadier Medlicott the Minister of Town and Country Planning in the House of Commons on May 19, 1948, declined to accept the suggestion that the Use Classes Order, 1948, should be amended so as to exclude from the definition of development the conversion of a dwelling-house into the council chamber of a local authority.

Development orders

The Minister has no intention at present of requiring (under s. 14 (3) (*a*) of the Act) local planning authorities to take architectural advice before approving the elevations and materials of houses to be erected by private persons: H. C. Debates, July 20, 1948, vol. 454, col. 202.

CENTRAL LAND BOARD FORMS

[*Continued from* p. 352, *ante.*]

S. 1 (N.R.)	Builders' near-ripe land. Supplementary Form to be completed by claimants who have answered "YES" to Question 20 (a) of Central Land Board Form S. 1.
S. 1A (N.R.)	Builders' near-ripe land. C.L.B. Explanatory Pamphlet (*ante*, p. 395).
S. 1 (R.)	Claim for payment in respect of depreciation of land values. Supplementary Form in respect of land which was under requisition on July 1, 1948.
S. 1 (P.)	Claim for payment in respect of depreciation of land values. Supplementary Form in respect of land acquired by public authorities between August 6, 1947, and July 1, 1948.

Statutory Instruments

The Extinguishment or Modification of Easements Regulations, 1948

(SI 1948, No. 1582)

Made	*July* 6, 1948
Laid before Parliament	*July* 8, 1948
Coming into Operation	*July* 9, 1948

The Lords Commissioners of His Majesty's Treasury, in pursuance of the powers conferred upon Them by subsections (2) and (3) of Section 4 of the Requisitioned Land and War Works Act, 1948, and of all other powers enabling Them in that behalf, hereby make the following Regulations :—

1. These Regulations may be cited as the Extinguishment or Modification of Easements Regulations, 1948, and shall come into operation on the 9th day of July, 1948.

2.—(1) In these Regulations :—

(*a*) the expression " the Act of 1945 " means the Requisitioned Land and War Works Act, 1945;

(*b*) the expression " the Act of 1948 " means the Requisitioned Land and War Works Act, 1948.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

3. The provisions of subsections (3) and (4) of Section 7 of the Act of 1945, and of Section 41 thereof, shall apply, where an easement is extinguished or modified under sub-section (2) of Section 4 of the Act of 1948, with the following adaptations, that is to say :—

(*a*) in sub-section (3) of Section 7, for the words " a restriction discharged or modified under paragraph (*b*) of sub-section (1) of this section " there shall be substituted the words " an easement extinguished or modified under sub-section (2) of Section 4 of the Requisitioned Land and War Works Act, 1948 "; and

(*b*) for the word " discharge " there shall be substituted the word " extinguishment ", and for the word " restriction " there shall be substituted the word " easement ".

4. Sections 25, 26 and 27 of the Town and Country Planning Act, 1944, as amended by the Town and Country Planning Act, 1947, and the Schedules, as so amended, referred to in those sections, shall, in connection with the operation of sub-section (3) of Section 4 of the Act of 1948, apply with the following adaptations, that is to say :—

(*a*) in sub-section (1) of Section 25, after the words " Where there subsists over land " there shall be added the words " which a Minister has acquired under Part II of the Requisitioned Land and War Works Act, 1945, or has power so to acquire, or would have power so to acquire if he did not already own it, or which a Minister having power, otherwise than by virtue of the said Part II, to acquire land under the Defence Acts (as defined in the said Act) has so acquired or proposes so to acquire (any such Minister being hereinafter in this section called 'the acquiring Minister'), or ";

(*b*) in subhead (*c*) of subsection (1) of Section 27, after the word " Act " there shall be added the words " or under Section 25 of this Act, as applied for the purposes of sub-section (3) of Section 4 of the Requisitioned Land and War Works Act, 1948," ;

(*c*) in subhead (*e*) of paragraph 1 of the Fourth Schedule, there shall be added the words " or of sub-section (3) of Section 4 of the Requisitioned Land and War Works Act, 1948 ";

(*d*) before the words " the purchasing or appropriating authority " there shall be added the words " the acquiring Minister or "; and

(*e*) the expression " extinguishment " shall include modification, and the expression " extinguish " shall be construed accordingly.

Town and Country Planning (Development Plans) Regulations, 1948

(SI 1948, No. 1767)

Made	*July* 28, 1948
Laid before Parliament	*July* 28, 1948
Coming into Operation	*August* 16, 1948

THE Minister of Town and Country Planning, in exercise of the powers conferred on him by Sections 8, 10, 11 and 111 of the Town and Country Planning Act, 1947, and of all other powers enabling him in that behalf hereby makes the following Regulations :—

PART I

GENERAL

1. These Regulations may be cited as the Town and Country Planning (Development Plans) Regulations, 1948, and shall come into force on the sixteenth day of August, 1948.

2.—(1) In these Regulations unless the context otherwise requires :—

" the Act " means the Town and Country Planning Act, 1947.

" the Minister " means the Minister of Town and Country Planning.

" Certified copy " or " certified extract " means respectively a copy or extract certified by the clerk of the local planning authority as being a true copy or extract.

" Development Plan ", in relation to any area, means the maps and written statement required in relation to that area by Part II of these Regulations and includes a Development Plan relating to any part of the area of a local planning authority prepared under subsection (5) of section 5 or section 7 of the Act, and proposals for any alterations or additions to a Development Plan.

" County " means an administrative county, but does not include the administrative county of London.

" Notice by advertisement ", in relation to a Development Plan, means a notice published in the " London Gazette " and in each of two successive weeks in at least one local newspaper circulating in the locality in which the land to which the Development Plan relates is situated.

" Specified period ", in relation to a notice by advertisement inviting objections or representations, means a period to be specified by the local planning authority in the notice being not less than six weeks from the date of the first local advertisement.

" District " means a county district, or, in relation to the administrative county of London, the City of London or a metropolitan borough.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

3.—(1) Every map comprised in a Development Plan and every extract therefrom shall include a key describing the notation used.

(2) The Minister may in any particular case, direct or approve a scale for any map comprised in a Development Plan or for any part of such map which differs from the scale prescribed for that map in Part II of these Regulations.

Part II

Form and Content of Development Plans

4.—(1) A Development Plan shall subject to paragraph (2) of this regulation consist of a basic map and a written statement and such other map or maps as may be appropriate under the succeeding provisions of these regulations.

(2) A Development Plan containing proposals for alterations or additions to a Development Plan already approved or made shall consist of such map, or maps referred to in the succeeding provisions of these regulations, and such written statement, as may be appropriate to those proposals, and any such map may be in substitution for any map or part of any map, forming part of the Development Plan already approved or made, or in addition to any such map.

5. Subject to the provisions of regulation 11, a basic map in the case of a county borough or the administrative county of London shall be a map (hereinafter referred to as a town map) to a scale of 6 inches to a mile and showing particulars and proposals in respect of such of the items specified in Parts I and III of the First Schedule to these regulations as may be appropriate to the area to which the particular map relates.

6.—(1) Subject to the provisions of regulation 11, a basic map in the case of a county shall be a map (hereinafter referred to as a county map) to a scale of one inch to a mile and showing particulars and proposals in respect of such of the items specified in Parts II and III of the First Schedule to these regulations as may be appropriate to the area to which the particular map relates.

(2) Town maps shall also be prepared as part of a Development Plan, for such areas in the county as the local planning authority may determine, or as the Minister may in a particular case direct.

7. A Development Plan which defines any land as an area of comprehensive development shall define the area on a map (hereinafter referred to as a comprehensive development area

map) to a scale of 1/2,500 and such map shall show particulars and proposals in respect of such of the items specified in Part IV of the First Schedule to these regulations as may be appropriate to the area.

8. A Development Plan which designates any land as subject to compulsory acquisition shall designate such land on a map (hereinafter referred to as a designation map) to a scale of 1/2,500 and such map shall show particulars and proposals in respect of the items specified in Part V of the First Schedule to these regulations.

9. A Development Plan which defines any land as the site of a proposed road solely for the purposes of section 47 of the Act or which designates any land as land to which section 48 of the Act (relating to the construction and improvement of private streets) applies shall define such land on a map (hereinafter referred to as a street authorisation map) to a scale of 1/2,500 and such map shall show whether the land is defined for the purposes of section 47 of the Act, or designated for the purposes of section 48 of the Act, and if designated, whether as the site of a proposed road, or as land required for the widening of an existing road.

10.—(1) The maps referred to in this Part of these regulations shall be identified on the face by the titles thereby conferred on them.

(2) Any map referred to in any of the last three preceding regulations may be combined with any other such map, provided that the combined map is identified as aforesaid and that separate notations are use so as to differentiate clearly between the particulars and proposals required to be shown on one map and those required to be shown on the other or others.

11. In the case of a Development Plan relating to part of the area of a local planning authority prepared under subsection (5) of section 5 of the Act

(*a*) if that part is in a county borough or the administrative county of London, and a comprehensive development area map but not a town map is prepared in respect thereof, such comprehensive development area map shall be the basic map for that part until a town map in respect thereof has been approved, when such town map shall become the basic map, but the map or maps already approved shall, subject to the provisions of regulation 4, continue to form part of the Development Plan;

(*b*) if that part is in a county, and a town map or a comprehensive development area map but not a county map is prepared in respect thereof, such town map, or, if there is no town map, such comprehensive development area map shall be the basic map for that part until a county map in respect thereof has been approved, when such county map shall become the basic map, but the map or maps already approved shall subject to the provisions of regulation 4, continue to form part of the Development Plan.

12.—(1) Every county map and every town map shall be accompanied by a programme map to a similar scale indicating the stages by which the proposals shown on such county map or town map should be carried out and distinguishing at least between (a) the first five years from the approval of the Development Plan, and (b) the remainder of the period covered by the Development Plan.

(2) Every comprehensive development area map shall be accompanied by a programme map to a scale of 1/2,500 indicating by reference to intervals of not more than five years the stages by which the proposals shown on the map should be carried out.

13. A written statement shall form part of every Development Plan and such written statement shall include :

(*a*) a summary of the main proposals of the Development Plan with such descriptive matter as the local planning authority consider necessary to illustrate the proposals of the Development Plan or as the Minister may from time to time direct for that purpose;

(*b*) in relation to any comprehensive development area map,

(i) a statement in accordance with the provisions of subsection (3) of section 5 of the Act, of the purpose or purposes for which the area is to be developed or redeveloped as a whole, and

(ii) a use zone table showing the main types of development proposed to be permitted or disallowed in different parts of the area;

(*c*) in relation to any designation map designating land allocated by the Development Plan for the purposes of any of the functions of a Minister, local authority or statutory undertaker, a statement identifying separately

(i) the land allocated to each Minister, authority or undertaker,

(ii) the purpose for which such land is allocated, and

(iii) the Minister, authority or undertaker to whom such land is allocated;

(*d*) in relation to any designation map designating land for the purpose of securing its use in the manner proposed by the Development Plan, a statement identifying the land proposed for each use and what that use is.

14. In the case of any contradiction in respect of any land to which a Development Plan relates between the particulars or proposals shown on one map comprised in the Development Plan and those shown on another of or other such maps, the map which is to a larger scale shall, if those particulars or proposals are required by these regulations to be shown thereon, prevail, and in case of any such contradiction between the maps included in the Development Plan and the written statement, the written statement shall prevail.

PART III

PROCEDURE FOR THE SUBMISSION AND APPROVAL OF DEVELOPMENT PLANS

15. A Development Plan shall be prepared in duplicate, each duplicate being sealed with the seal of the local planning authority. One duplicate shall be submitted to the Minister together with a certified copy, and a certificate that the provisions of subsection (1) of Section 10, or (in the case of a Development Plan relating to land within the City of London) of paragraph (*a*) of subsection (11) of Section 114, or (in case of a Development Plan relating to land within a metropolitan borough) of paragraph (*a*) of subsection (12) of Section 114 of the Act have been complied with.

16. On the submission of a Development Plan to the Minister the local planning authority shall publish notice by advertisement of the submission in the form specified in Part I of the Second Schedule to these Regulations, or a form substantially to the like effect.

17. After the Development Plan has been submitted the Minister shall take into consideration the Development Plan and any objection or representation received by him within the specified period and shall decide whether or not to cause

a public local inquiry to be held into the objections or representations at which any interested persons may be heard. If the Minister decides to dispense with an inquiry he shall, before approving the Development Plan, afford to any person who has duly made an objection and whose objection has not been met or withdrawn, an opportunity of appearing before and being heard by a person appointed by him for the purpose; and if such a hearing is arranged the Minister shall at the same time afford to the local planning authority and such other persons as he deems expedient an opportunity of appearing and being heard on the same occasion.

18. On receiving notice of the Minister's approval of the Development Plan with or without modifications the local planning authority shall forthwith publish a notice by advertisement in the form specified in Part II of the Second Schedule to these Regulations, or a form substantially to the like effect.

19. The local planning authority shall serve a notice in the same terms as the notice referred to in the last preceding regulation on any person by whom an objection or representation was duly made to the Development Plan and who has sent to the authority a request in writing for the service of such notice specifying an address for service, and on such other persons if any, as may be required by general or special directions given by the Minister.

20. The local planning authority shall furnish to the Minister a certified copy of any advertisement published in pursuance of these Regulations and when the service of any notices required to be served under these Regulations has been completed shall furnish to the Minister a certificate that the requirement has been complied with.

21. Where any notice required to be given under the provisions of these Regulations refers to the deposit of a certified copy or certified extract of a Development Plan, the local planning authority shall arrange for such copy or extract to be deposited at a place generally convenient to the whole area to which the Development Plan relates, and, where that area extends over more than one district, shall arrange for the deposit in each district to which the Development Plan relates or in a place convenient thereto of a certified copy, or a certified extract relating to that district or to a group of districts which includes that district.

22. The local planning authority shall arrange for giving access to the Development Plan and to such copies or extracts

therefrom as are mentioned in regulation 21 at all reasonable hours and without charge. Where such copies or extracts are deposited in pursuance of a notice inviting objections or representations, they shall be available for inspection from the beginning of the specified period, until the expiration of six weeks from the date on which the notice referred to in regulation 18 is first published.

23. In relation to the making of a Development Plan by the Minister under Section 7 of the Act the foregoing provisions of this Part of these Regulations and of the Second Schedule thereto with respect to the submission of the Development Plan to the Minister, to the approval thereof and to the publication and service of notice of approval, shall have effect, subject to any necessary modifications, in relation to the preparation in draft of a Development Plan by the Minister, to the making thereof and to the publication and service of notice of such making;

Provided that—

(*a*) the draft Development Plan shall not be sealed and no such certified copy or certificate as is referred to in regulation 15 shall be required;

(*b*) the local planning authority shall publish or serve such notices as are required to be published or served unless the Minister otherwise directs, and shall arrange for the deposit of copies or extracts of the Development Plan and for giving access thereto.

24. As soon as possible after the coming into operation of a Development Plan, the local planning authority shall arrange for the printing and publishing of the Development Plan, including the reproduction on such scale as may be appropriate of any relevant maps, and shall make available printed copies for sale to the public at a reasonable cost; provided that such printing and publication shall not be necessary in regard to a Development Plan which amends an existing Development Plan but the amendment shall unless the Minister otherwise directs be sufficiently published by being incorporated in the next subsequent reprinting of the Development Plan.

PART IV

CONCURRENT PROCEDURE UNDER SECTION 8 OF THE ACT

25.—(1) Where a Development Plan has been submitted to the Minister or is prepared in draft by the Minister, the

Minister or the Minister of Transport may, pending the approval or making of the Development Plan, take any proceedings to which this regulation applies with reference to any land included in the area to which the Development Plan relates concurrently with any proceedings required under the Act or these Regulations to be taken in connection with the approval or making of the Development Plan.

(2) The proceedings to which this regulation applies are

(*a*) the proceedings required to be taken by the Minister under the First Schedule to the New Towns Act, 1946 preliminary to the making of an order under Section 1 of that Act designating an area as the site of a new town and

(*b*) the proceedings required to be taken by the Minister of Transport under the Second Schedule to the Trunk Roads Act, 1946 preliminary to the making of an order directing that any road proposed to be constructed by him shall be a trunk road or authorising him to construct or improve any road under Section 4 of that Act.

FIRST SCHEDULE

PARTICULARS AND PROPOSALS TO BE INCLUDED IN TOWN, COUNTY COMPREHENSIVE DEVELOPMENT AND DESIGNATION MAPS

Note.—The Development Plan is to include, in respect of the items mentioned in this Schedule, particulars of existing development which it is intended to retain, and proposals for future development. Locations required to be shown may be shown approximately or in appropriate cases by means of symbols.

PART I

Particulars and proposals to be shown on town maps (to a scale of six inches to one mile)

(i) Areas or location of areas comprised in the following maps:

(*a*) comprehensive development area maps already approved or presently submitted, showing the other particulars and proposals specified in this Part and in Part III but (save as aforesaid) not those specified in Parts IV or V of this Schedule;

(*b*) designation maps already approved or presently submitted;

(ii) Areas primarily for:

(*a*) industrial use;

(*b*) principal business, civic, cultural or other special uses for the town as a whole;

(*c*) residential use indicating densities proposed for each area, and location or area of shopping centres;

(iii) Location of principal roads, parking places, etc., in the following categories:

(*a*) trunk roads;

(*b*) other principal traffic roads;

(*c*) principal parking places or stations for public vehicles;

(iv) Location of railway and water transport facilities in the following categories:

(*a*) railways and railway land (indicating passenger and goods stations);

(*b*) waterways, whether docks, harbours or inland waterways;

(*c*) wharves, depots and land for use with such waterways;

(v) Areas or locations of primary and secondary schools, colleges or other educational institutions; and their playing fields;

(vi) Open spaces.

Part II

Particulars and proposals to be shown on county maps (to a scale of one inch to one mile)

(i) Areas or location of areas comprised or to be comprised in the following maps:

(*a*) town maps already approved or presently submitted, showing the present and proposed built-up areas and the particulars and proposals specified in item (iv) of this Part, but not any other particulars or proposals under this Schedule;

(*b*) town maps which will be prepared at a later date;

(*c*) comprehensive development area maps already approved or presently submitted;

(*d*) designation maps already approved or presently submitted;

(ii) Areas designated or proposed to be designated under Section I of the New Towns Act, 1946, showing the particulars and proposals specified in item (iv) (*a*) of this Part but not any other particulars and proposals under this Schedule;

(iii) Location of other settlements intended as centres for social, educational or health services;

(iv) Location of principal roads, in the following categories:

(*a*) trunk roads;

(*b*) other principal traffic roads;

(v) Location of railway and water transport facilities in the following categories:

(*a*) railways;

(*b*) waterways, whether docks, harbours or inland waterways.

Part III

Other Particulars and proposals to be shown on town and county maps if applicable

(i) Land to be used for securing the winning and working of minerals other than coal;

(ii) Surface areas required in connection with the winning and working of coal, or for collieries;

(iii) Areas for the deposit of refuse or waste materials;

(iv) Areas to be used for Government purposes (the purposes being indicated);

(v) Airfields;

(vi) Areas to be used for the purposes of local authorities or statutory undertakers (the purposes being indicated),

(vii) Areas of great landscape, scientific or historic value;

(viii) Areas where facilities for large scale holiday camping are to be provided;

(ix) Any other particulars or proposals of importance.

Part IV

Particulars and proposals to be shown on comprehensive development area maps (to a scale of 1/2500*—approximately* 25 *inches to a mile)*

(i) The boundary of the area of comprehensive development;

(ii) Use zones, indicating the densities of buildings proposed in each zone;

(iii) Principal roads, in the following categories:

(*a*) trunk roads;

(*b*) other principal traffic roads;

(*c*) streets forming the main framework of residential, industrial or business areas;

(iv) Open spaces, and the purposes for which they are to be used;

(v) Any other particulars or proposals of importance.

Part V

Particulars and proposals to be shown on designation maps (to a scale of 1/2500*—approximately* 25 *inches to a mile)*

(i) The boundary of the area or areas designated;

(ii) In relation to each area or part of an area, the following particulars:

(*a*) land allocated for the purposes of any of the functions of a Minister, local authority or statutory undertaker;

(*b*) land comprised in an area of comprehensive development;

(*c*) land contiguous or adjacent to an area of comprehensive development;

(*d*) other land allocated for the purpose of securing its use in the manner proposed by the Development Plan.

SECOND SCHEDULE

Part I

[*Form of Notice of Submission of Development Plan*]

Part II

[*Form of Notice of Approval of Development Plan*]

Town and Country Planning (Building Preservation Order) Regulations, 1948

(SI 1948, No. 1766)

Made	*July* 28, 1948
Laid before Parliament	*July* 28, 1948
Coming into Operation	*August* 16, 1948

The Minister of Town and Country Planning (hereinafter called " the Minister ") in exercise of the powers conferred on him by Section 29 of the Town and Country Planning Act, 1947 (hereinafter called " the Act ") and of all other powers enabling him in that behalf hereby makes the following regulations :—

1. These regulations may be cited as the Town and Country Planning (Building Preservation Order) Regulations, 1948, and shall come into force on the sixteenth day of August, 1948.

2.—(1) In these regulations, unless the context otherwise requires :—

" the Act " means the Town and Country Planning Act, 1947;

" local authority " means a local planning authority or the council of a county district;

" the Minister " means the Minister of Town and Country Planning;

" order " means a building preservation order made under section 29 of the Act, and in regulations 4, 5 and 6 includes an order amending or revoking such an order;

" notice by advertisement," in relation to an order, means a notice published in at least one local newspaper circulating in the locality in which the building is situate.

(2) Any reference in these regulations to the council of a county district shall include a reference to the Common Council of the City of London and to the council of any metropolitan borough.

(3) The Interpretation Act, 1889, shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

3.—(1) An order shall be in the form (or substantially in the form) set out in the Schedule hereto with such adaptations as the circumstances may require.

(2) Before making an order, the Common Council of the

City of London, or the council of a metropolitan borough, shall consult with the London County Council.

4.—(1) A local authority desiring to submit an order to the Minister for confirmation shall transmit to the Minister the sealed order in duplicate with any plan annexed thereto, a copy of such order and plan (if any) and a statement of the grounds on which the local authority consider that the order should be confirmed; and shall send a copy of such order, plan and statement to the council of the county district in which the building is situate or if the authority making the order are themselves that council, to the local planning authority for the area.

(2) The local authority shall forthwith give notice by advertisement of the submission of the order to the Minister, and shall include in the notice a statement that the order and plan (if any) or certified copies thereof, will be open for inspection at a specified place or at specified places and between specified hours, and that any objections or representations with reference thereto may be sent in writing to the Minister within twenty-eight days from the date of the publication of the advertisement.

(3) The local authority shall serve on the owner and any occupier of the building notice of the submission of the order to the Minister, together with a copy of the order and plan (if any) and of the statement referred to in paragraph (1) of this regulation. The notice shall contain a statement that the period of twenty-eight days, during which objections and representations may be sent to the Minister, shall run from the date of the service of the notice.

(4) The local authority shall, as soon as may be after the publication of the advertisement, send a copy of the newspaper containing the advertisement to the Minister, together with a copy of the notice served on the owner and any occupier of the building, and a statement of the date or dates of such service.

5. The Minister shall, before deciding whether to confirm the order, take into consideration any objections or representations in writing received by him within the time specified in the notices under paragraphs (2) and (3) of regulation 4, and if a local inquiry is held, the report of such inquiry.

6. The local authority shall on receipt of the Minister's decision on the order

(*a*) inform the owner and any occupier of the building and the council of the county district in which the building is situate (or the local planning authority as the case may be) of the Minister's decision and, where the order is confirmed, serve on each of them a copy of the order as confirmed;

(*b*) where the order is confirmed, otherwise than provisionally under the proviso to subsection (4) of section 29 of the Act, give notice by advertisement of such confirmation and state in such notice the place where and the hours within which a copy of the order as confirmed may be inspected; and

(*c*) furnish to the Minister a certificate that the requirements of this regulation have been complied with.

SCHEDULE

[*Form of Building Preservation Order*]

Circular No. 55, dated July 15, 1948. Commentary on the Minerals Regulations, 1948, and Modification of Mines Act Regulations, 1948, and the Minerals Direction No. 1, 1948. (1d.)

Circular No. 56, dated July 20, 1948. Notifying issue of the Control of Advertisements Regulations, 1948. (1d.)

Circular No. 57, dated July 23, 1948. Notifying issue of the Local Authorities' Land, Exceptions to s. 82 Regulations, 1948. (1d.)

Circular No. 58, dated July 23, 1948. Notifying the issue of Explanatory Memorandum P. R. 3, on dead-ripe land. (1d.)

Explanatory Memorandum, July, 1948. Explanatory of the Minerals Regulations, 1948, and the Modification of Mines Act Regulations, 1948. (2d.)

Explanatory Leaflet P. R. 3, June 30, 1948. Explanatory of claims for certificates in respect of dead-ripe land.

Valuation and Management

By W. A. Leach, F.R.I.C.S.

I. Development Rights of Owners (*ante,* p. 38).
II. Effect of Planning on Property Management (*ante,* p. 92).
III. Development Value—Development Charges—Effect on Property Values (*ante,* pp. 181, 263).
IV. Compensation for Planning Action other than Development (*ante,* p. 343).
V. **Compensation for Acquisition of Land.**
VI. Valuation for Injurious Affection.

V. Compensation for Acquisition of Land

GENERAL PROVISIONS

1. Although Part V of and the Seventh Schedule to the Town and Country Planning Act, 1947, contain many provisions as to the assessment of the compensation payable on the acquisition of land, these are not restricted to planning acquisition, but are amendments, in some respects of temporary effect, to the existing hotchpotch code. They are, therefore, only intelligible against a background of existing knowledge.

It may here be noted, however, that for the particular purpose of Part IV of the 1947 Act, 'land' includes any interest or right in or over land.

2. The principal Act relating to compensation for compulsory acquisition of land is the Lands Clauses Consolidation Act, 1845, but this was varied, as regards the bases of assessment of compensation payable by Government departments and local and public authorities and as regards the tribunal for the determination of claims against such departments and authorities, by the Acquisition of Land (Assessment of Compensation) Act, 1919. This latter Act has now been extended in scope by the 1947 Act to apply to purchases by the Central Land Board and statutory undertakers under whatever statute land is acquired (s. 57 and proviso to s. 118). The Act of 1919 also applies to development corporations under the New Towns Act, 1946 (New Towns Act, 1946, s. 4 (7)).

3. The procedure for purchase by the Minister of Transport

and local authorities was laid down in s. 1 of the Acquisition of Land (Authorisation Procedure) Act, 1946. This Act was extended by the 1947 Act to purchases by all Government departments, the Central Land Board, and statutory undertakers, but only where these other purchasers are acquiring under ss. 37, 38, 41, 43 and 49 of the 1947 Act, *i.e.*, this is not an extension to purchases under all statutes. Parts of the 1946 Act are applied to other purchases under the 1947 Act.

As to acquisition of part of a property see the 1946 Authorisation Procedure Act, Sched. II, para. 4.

4. Under s. 5 (2) of the 1919 Act a notice to treat could be withdrawn within six weeks of the authority receiving notice of claim, but a notice to treat deemed to have been served under s. 19 of the 1947 Act cannot be withdrawn (s. 19 (4)). As to a notice to treat deemed to have been served in cases of expedited completion see the 1944 Act, Sched. VI, para. 7, as incorporated in Sched. XI of the 1947 Act, and as to a notice to treat in cases of speedy acquisition see the Authorisation Procedure Act of 1946, s. 2 (4).

As to the rate of interest payable where entry is made before payment of compensation see s. 57 (2) of the Act of 1947, and the Acquisition of Land (Rate of Interest on Entry) Regulations, 1947 (S. R. & O. 1947, No. 791). Where the normal procedure is followed interest on unpaid compensation will be governed by s. 11 of the Arbitration Act, 1934.

The Six Basic Rules

5. In considering the assessment of compensation it is desirable to recapitulate the six rules of s. 2 of the 1919 Assessment of Compensation Act in order that subsequent provisions may be understood:—

Rule 1.—No allowance shall be made on account of the acquisition being compulsory.

Rule 2.—The value of the land shall, subject to the following rules, be the amount which the land might be expected to realise if sold in the open market by a willing seller; provided that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant.

The 1944 Planning Act contained a provision (Sched. V, para. 8) that the arbitrator shall not take into account any interest in land, or any enhancement of any interest in land by reason of any building erected, work done, or improvements or alterations made, whether on the land purchased or any other land with which the claimant is, or was at the time of the erection of the building, etc., directly or indirectly concerned, if the arbitrator is of opinion that what was done was not reasonably necessary and that the purpose was to obtain compensation or increased compensation. This provision also appears in the 1946 Authorisation Procedure Act, Sched. II, para. 8: it enables the arbitrator to look back prior to the notice to treat, and is intended to prevent owners anticipating public action.

S. 51 (3) of the 1947 Act provides that in assessing compensation for compulsory acquisition no account shall be taken of any depreciation in the value of the land due to designation.

As to the exception of minerals from purchases and rights of working minerals, see the 1946 Authorisation Procedure Act, Sched. II, para. 7.

Rule 3.—The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department or any local or public authority.

Under this Rule the special adaptability of land for any purpose is to be excluded, in cases to which the 1919 Act applies, where:—

(a) the land could only be applied to that purpose in pursuance of statutory powers;

(b) the demand for the land for that purpose is from one particular purchaser only; or

(c) the demand for the land for that purpose comes only from a Government department or a local or public authority, and possibly the Central Land Board or a statutory undertaker (s. 57 of the Town and Country Planning Act, 1947).

It is not to be excluded where there is a wider demand for the purpose and the actual or possible competition of Government departments, etc., merely enhances the market value (*e.g.*, land suitable for housing purposes may sometimes have a greater value because of local authority activity in developing housing estates), *but the restrictions on rights of development and the development charges payable under the 1947 Act now greatly limit the scope of this Rule.*

Rule 4.—When the value of the land is increased by reason of the use thereof and of any premises thereon in a manner which could be restrained by any Court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account.

The 1944 Planning Act (Sched. V, para. 9) contains a further provision carried forward in Sched. XI of the 1947 Act to the effect that in certain cases an acquiring authority may obtain an order confirmed by the Minister of Health declaring that a house is unfit for human habitation, when it may then be acquired (on confirmation of the compulsory purchase order by the appropriate Minister) on the basis laid down in Part III of the Housing Act, 1936. Rights of objection are provided for.

By s. 2 (6) of the 1946 Act the order as to unfitness must have been obtained before entry by the acquiring authority.

Rule 5.—When the land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is *bona fide* intended, be assessed on the basis of reasonable cost of equivalent reinstatement.

Note the word " may ". The decision rests with the arbitrator.

Rule 6.—The provisions of Rule 2 shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

TEMPORARY RULE APPLICABLE FROM NOVEMBER 17, 1944, TO AUGUST 6, 1947

6. S. 57 of the Town and Country Planning Act, 1944, established an extra rule to the effect that compensation for the acquisition of land and for damage due to severance or other injurious affection under a notice to treat served within the period of five years from November 17, 1944, should be ascertained by reference to *prices current at March 31, 1939*, as though at that date the interest in the land being acquired had been subsisting and the state of the land had been the same as at the date of the notice to treat. By s. 50 of the Town and Country Planning Act, 1947, the period of five years had been abridged and this rule does not operate where notice to treat is served after August 6, 1947.

TEMPORARY RULE APPLICABLE FROM AUGUST 6, 1947, TO "THE APPOINTED DAY"

Existing Use Value as at January 7, 1947

7. Although the rule in s. 57 of the 1944 Act does not apply where notice to treat has been served since the passing of the 1947 Act (August 6, 1947) (s. 50), the latter Act did not become generally operative until "the appointed day" (July 1, 1948) and a temporary basis of acquisition was laid down in s. 55 of the latter Act in respect of the intervening period.

The essence of the section is that when notice to treat is served during the period named the basis of value will be that immediately prior to January 7, 1947, assuming the land on that date to have been in the same state and subject to the same incidents as at the date of service of the notice to treat. By s. 76 (4) regard is to be had to the conditions imposed under any planning consent granted in respect of the existing development. It is also to be assumed that the land was at the date of the notice to treat subject to a permanent restriction against any development other than the classes of development set out in the Third Schedule to the Act (see para. 9, *post*, as to s. 112 (1)). The operation of Rule 5 under the 1919 Act (equivalent reinstatement) is not excluded. See s. 91 as to claims under Part VI of the Act for loss of development value in respect of land in course of sale on July 1, 1948.

8. The 1947 Act (s. 50) specifically abolishes the 1939 standard as far as compensation is payable for the acquisition

of an interest in land by virtue of a notice to treat served after the passing of the Act. Compensation in respect of injurious affection to land retained by the claimant is part of the cost of compulsorily acquiring an interest in land (s. 63 of 1845 Act, and s. 119 (4) of the 1947 Act) so that that part of the compensation is also to be estimated in accordance with prices at January 7, 1947.

PERMANENT NEW RULES APPLICABLE AFTER THE APPOINTED DAY

Existing Use Value at Time of Service of Notice to Treat

9. *General Rule.*—Subject to the exclusion of vacant possession value (para. 22, *post*) there will, as from July 1, 1948, be a reversion to the rule of open market value at the date of service of the notice to treat, but the restrictions on development imposed by the 1947 Act necessitate the new rule to be found in s. 51, *viz.*, the value of any interest in land shall be ascertained on the assumption that planning permission would be granted for any class of development specified in the Third Schedule to the Act but would not be granted for any other development. Further, s. 112 (1) provides in effect that a right under Sched. III has no value if and so far as a development would be in contravention of bye-law or other statutory control. By s. 51 (4) where permission for such other development outside the Third Schedule has been given before the date of service of the notice to treat, the value of the interest is to be calculated as if the permission had not been granted unless a development charge under Part VII of the Act has been paid or none is payable by virtue of Part VIII of the Act. Consider two cases:—

(*a*) Change of use creating no additional value and not subject to development charge on grounds of value. The permission is to be deemed not to have been granted; and is to the effect that no claim for disturbance could be made by an owner-occupier in respect of the hypothetically unauthorised use?

(*b*) An owner spends £1,000 on improvements increasing the value of the property by £750.

No development charge would have been payable as a matter of valuation and the permission is to be deemed not granted. Does this mean that the works must be ignored (or that being hypothetically subject to an enforcement notice the cost of removal should

> be allowed for !), or can one say that for four years the business risk of an enforcement notice being served would be negligible (the works have in fact been approved) and that after four years they would be regularised so that there is no occasion to look to enforcement in vastly changed conditions years ahead. There may, of course, be cases in years to come where circumstances have changed since consent was granted, so that if one is hypothetically to regard the consent as not granted, there will be an immediately liability to enforcement.

Freedom from development charge in respect of developments specified in regulations (*ante*, p. 236) under s. 69 (2) (*b*) cannot be taken into consideration. See also the Minerals Regulations, 1948 (No. 1521), *ante*, p. 330.

10. *Effect of previous application for planning permission within Third Schedule.*—Where there has been an actual application for permission to develop within the limits of Part II of Sched. III (*i.e.*, other than Classes 1 and 2—replacement of an existing building and use of a dwelling-house as two or more dwelling-houses) and this has been refused or granted conditionally, or the permission has been revoked or modified by the imposition of conditions, it is to be assumed on compulsory acquisition that such permission would not be granted or would be granted only subject to the conditions actually imposed, as the case may be (s. 51 (2) (*a*)). The reason for this is, of course, that (except where a purchase notice has been served under s. 19) refusal, conditional permission, revocation, or modification would be the subject of a claim under ss. 20 or 22.

11. *Effect of enforcement notice and conditions imposed under earlier planning control.*—Where land to be compulsorily acquired is subject to an enforcement notice under s. 23 in respect of contraventions of previous planning control the value of any interest therein is to be calculated with regard to the requirements of that notice (s. 75 (6)) and where the existing development is subject to conditions under planning permission granted before the appointed day, those conditions are to be taken into consideration (s. 76 (4)). It would seem necessary as a matter of valuation to have regard to a notice served in respect of new contraventions.

12. *Effect of order for removal of building or discontinuance of a use.*—Further, by s. 51 (2) (*b*) where an order to remove a building or discontinue a use has been served under

s. 26 of the Act (conforming buildings and uses), and compensation has become payable under s. 27, it is to be assumed that planning permission would not be given for rebuilding that building or resuming that use. Where the order under s. 26 grants permission for an alternative development that will be dealt with as set out above. It would appear that where compensation is payable in respect of an order under s. 26 requiring the *alteration* of a building, there is nothing to stop the assumption that reinstatement of the alteration would be approved together with the extension of the reinstated building under para. 3 of Sched. III.

13. *Purchase notice.*—Where an interest is purchased in pursuance of a purchase notice under s. 19 of the Act (this will be dealt with in Article VI of this series), and the Minister has certified that any building on the land has become incapable of reasonably beneficial use, then if the purchase notice was served in consequence of a refusal of permission for a development which would have involved the demolition of the whole or substantially the whole building, or in consequence of the revocation or modification of such a permission, no account is to be taken, for purposes of compensation, of the value of the building except in so far as the value of its materials would exceed the cost of demolition (s. 51 (5)). Where there are two or more buildings on the site presumably they are to be regarded as a whole. Compare, however, the specific provision of s. 112 (2) as to Sched. III.

It may be noted that where the purchase notice is served in response to an initially conditional permission (as opposed to a modified permission) this provision does not apply. It should also be noted that it is only the value of the buildings intended by the owner to be demolished which are affected, and not buildings partially erected subsequently to the demolition but prior to the revocation or modification of the permission.

Where the purchase notice is confirmed in respect of an interest in part only of the land comprised in the application for permission to develop, any appreciation or depreciation in the value of that interest due to any direction given under s. 19 (2) (*b*) in respect of the other land is to be ignored (s. 51 (6)). Any claim for depreciation of the land not to be acquired will be made under s. 20 (see Article VI).

14. *Other provisions.*—As to allowance for compensation paid under s. 79, see Article VI of this series.

The operation of Rule 5 of the 1919 Act (equivalent reinstatement) is not excluded (s. 51 (1)).

15. *Application of Rules.*—What the value may be at the date of service of a notice to treat may not always be easy to ascertain.

Consider, for example, a cleared bombed site in the middle of an extensive devastated area to be replanned as a whole. The right to rebuild on the site can be assumed (Sched. III, para. 1), but can it be assumed that the adjacent sites, where known to be subject to a new planning scheme, may also be rebuilt upon? If the site has to be valued as in the new plan (which may take many years to carry out and be subject to much variation) what would a purchaser in the open market pay, especially if the site is in the middle of land shown in the plans as a public open space? It would appear that the valuer must look at the circumstances as they are at the date of the notice to treat (except the assumption of a right to develop the site under consideration). In this connection comparison may be made with s. 61 (5) (proviso), which says in effect that in computing the value of land for the purpose of that section the effect of the 1947 Act on adjacent land is to be disregarded. There is no similar provision in Part V of the Act dealing with compensation for acquisition. Broadly the Act makes no provision for payment of compensation for the effect on the value of one parcel of land of planning proposals in respect of contiguous and adjacent land of other owners, and where land is compulsorily acquired the owner thereof can claim only its value as left by such proposals.

[*To be continued.*]

Dealings with Land under the Planning Acts

By HAROLD POTTER, LL.D., Barrister-at-Law

I. Inquiries Preliminary to Contract (*ante,* p. 48).
II. Contract for Sale (*ante,* p. 104).
III. Requisitions on Title (*ante,* p. 188).
IV. Conveyances on Sale (*ante,* p. 273).
V. Leases (*ante,* p. 353).
VI. **Mortgages.**
VII. Settlements and Wills.

VI. Mortgages

1. It is in the case of mortgages that, perhaps, the full impact of the Act will first be clearly observed. The mortgagee has only one real aim so far as the land is concerned, and that is, to have adequate security easily realisable. The uncertainty which now surrounds the legal use is most calculated to defeat this end. In fact it obscures the issues on two points. First, there is the problem of the value of the security. Secondly, the mortgagee must safeguard himself against difficulty in making title if he is called upon to sell. Both these questions are concerned with the validity of the actual use of the property at the date of the mortgage. Assuming the validity of the actual use the form of the mortgage will be concerned with preserving the validity of the use and proof of its existence.

2. With regard to the value of the security it is essential that the mortgagee shall value the property for its " permitted use ". If there has been a contravention of planning control, an enforcement notice served under s. 23 might result not only in restricting the use to some less valuable form, as, for example, transmuting business into residential premises, but may even involve the expense of pulling down the whole or part of the premises. Consequently, for the purposes of value alone, a thorough investigation of the title to the use is imperative.

With other matters affecting value we are not strictly concerned, since they are for the valuer rather than the conveyancer. Nevertheless, it may be in point to remark that, save in the straightforward case of fully developed property, the present selling value does not seem to be a satisfactory guide to the true value of the property. Where property is capable of development there is evidence[1] of a tendency to ignore the development charge, presumably on the assumption that this can be passed on by the developer to the ultimate purchaser or lessee of the property when developed. As we understand the attitude of the Ministry it is not intended that this should happen, and there is power to prevent it by compulsory acquisition on behalf of the developer at " existing use value ". The general assumption of the authorities is that undeveloped land or partially developed land[2] has value normally as agricultural land.

We mention this point in particular because solicitors acting for trustees should advise any trustees contemplating loans that in the present uncertainty it is more than usually desirable to lend only with the protection of a valuer's report under the Trustee Act, 1925, s. 8.

(i) *Title*

3. With regard to the investigation of title generally, reference may be made to previous articles and, in particular, those appearing at pp. 48, 188. It is, however, desirable to draw attention to one or two points, and especially in the light of further Regulations and the different purpose where security for loans is involved.

(a) One overriding consideration, where the land is not fully developed, is the possibility of compulsory acquisition or interference with existing use. This may be apparent from the Development Plan, if any, since land may be designated for compulsory acquisition : s. 5 (2), (3). This would not make it a bad security, though unattractive to a prospective purchaser, because, so long as the property is not overvalued for this purpose, it would seem that the mortgagee is protected. If compensation is payable under ss. 20, 22 and 27 of the Act, that is, for refusal to permit development, revocation or modification of planning permission, or notice of discontinuance of user, the compensation is payable to the mortgagee and applicable as proceeds of sale : Sched. IV, para. 3. In cases of compulsory acquisition the procedure under the Acquisition of Land (Authorisation Procedure) Act, 1946, applies : s. 37 (4) of the 1947 Act.

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[1] See *ante*, p. 306, and *ante*, p. 382.

[2] See further Mr. Stuart Daniel's note, *ante*, p. 391.

(b) It is now clear (Local Land Charges (Amendment) Rules, 1948, *ante*, p. 313) that enforcement notices : s. 23; abatement notices : s. 33; revocation or modification of planning permission : s. 21; discontinuance of use orders : s. 26; tree and building preservation orders : ss. 28, 29; are to be treated as land charges registrable under the Land Charges Act, 1925. Consequently, a mortgagee should have notice of any such by search and, if not registered, these will not be binding : Land Charges Act, s. 15. It may be convenient, however, to point out that for practicable purposes these notices and orders in the main differ from ordinary charges, because, though they may not be effective against a purchaser, there seems little to prevent the authority concerned from making a fresh order or giving a new notice. It does, however, simplify the practitioner's task that search in the local land charges register should provide these details. But it should be borne in mind that these orders or notices are frequently preceded by "proposals" for a notice or order, and these proposals do not appear to be subject to registration. The specific question should, therefore, be asked.

(c) Where the user of the property is complicated, as it may be in the case of industrial and other premises, there seems to be be no reason why a mortgagee should not require a statutory declaration setting out by reference to plan or schedule or both the various permitted uses. This would not, of course, be valid evidence in a court of law, but it would certainly direct attention to overlooked vagaries of use, and would form the basis of the relevant provisions in the mortgage.

(ii) *Form of Mortgage*

4. In the past a mortgage has been regarded as a particularly good root of title. We think that the Law of Property Act, 1925, may have modified this attitude, but it must now be faced because, if it is to be so used, obviously the description of use, etc., must comply with the form appropriate to conveyance as well as charge. It seems to us that this form should be adopted, notwithstanding that it is not requisite to the validity of the charge itself, for the following reasons :

(i) if it is the first title deed after the Appointed Day it will normally be the first record of the permitted use;

(ii) it will be convenient in connection with a covenant to maintain the "permitted use";

(iii) it will enable an extended, and, therefore, advantageous, covenant for title;

(iv) it should simplify making title should the mortgagee have to realise his security.

The last reason reinforces the desirability of the statutory declaration of use already mentioned.

5. A mortgage differs from a conveyance because the mortgagor still retains the use and enjoyment of the property. In this respect a mortgage resembles a lease more closely than a conveyance, and analogous covenants requiring the maintenance of use and consent to a "material change" in use should be included. It must be borne in mind that a change of use may be a "permitted use" by virtue of the effect of the Uses Classes Order, 1948 (*ante*, p. 145), and the General Development Order (1948, *ante*, p. 149). Probably it is desirable that no change should be made without consent, since otherwise the mortgagee may be faced with difficulty in making title on realisation.

6. It seems equally clearly desirable that there should be a covenant against contravention of the Act so that the power of sale may become exercisable on breach. If the security cannot be realised the mortgagee may subsequently become involved in financial loss due to an enforcement notice.

7. Generally, for the purposes of the Act, a mortgagee (other than a mortgagee in possession) does not fall within the definition of "owner": s. 119. Since the mortgagee is not an owner he will not normally receive information of planning notices that affect the property, although in some cases provision is made for this, as in a discontinuance notice, if the authority is of opinion that he will be affected by a discontinuance order: s. 26 (2). Consequently, it seems desirable to insist on a covenant that information of all such notices, orders, etc., shall be passed on to the mortgagee.

8. One other clause seems obviously to be required, namely, provision that any expenses, etc., to which the mortgagee may be put in connection with planning requirements shall be aggregable with the capital. These expenses are only likely to be incurred by a mortgagee where the security has "gone wrong" and the mortgagee is forced to realise it. Obviously, therefore, the mortgagee should not be left to a personal right against the mortgagor as is contemplated, for example, in having to meet the expense of an enforcement

notice: see s. 24 (2); though here the mortgagee will not normally be liable, since he will not be the "owner": see s. 24 (1).

9. If the form of mortgage is one repayable by instalments with the date for redemption postponed to the final instalment, there may be substantial danger to the security if there is a material change of user or other planning contravention. This danger may warrant a declaration that a discontinuance order or material change of use should make the whole principal become payable or the power of sale exercisable. In the common form this point will be met by the usual provision that the power of sale becomes exercisable on breach of covenant *provided* that the mortgage contains the covenants already discussed. In the accompanying precedent no provision has been made to meet the case of principal repayable by instalments, because it is assumed that the covenants contained in the precedent will be inserted into the common form.

10. This very brief discussion of the points, most of them assuming some familiarity with discussions in earlier articles, does not attempt an exhaustive survey of the problem because we feel that this legislation will have a drastic effect on mortgages, and it is too early even to guess the result. Undoubtedly a practice will arise and no doubt longer mortgage deeds are inevitable. The fact is, that the security is reduced from a right to an "estate" to a right to a "use", and that the continuance of that use is dependent upon the will of the planning authorities. It is true that in a general way this situation existed before July 1, 1948, but it was a legal rather than a practical issue until that date. It seems now that it is vital to the mortgagee that all reasonable steps should be taken to protect the "use" and *possibly* to have power to enforce the security immediately if, through the action either of the mortgagor or the planning authority, this permitted use is "materially changed".

11. We may make one other point. In the case of registered land the practice of using the prescribed form of charge without or with scarcely any addition seems doomed to go. In our opinion, all the relevant clauses about use, covenants for title, and covenants to maintain the use, and give notices, etc., must be included.

12. So far we have made no mention of the claim on the "global sum". This claim has, since July 1, 1948, been converted into personal property: s. 64. As from the

Appointed Day, in our opinion a charge can only be taken on it by way of collateral security, and then only in accordance with the principles relating to personal property—perhaps, we should say an expectancy. The total sum available only is known and the value of hypothetical claims quite unascertainable. When the claims are determined the amount will be issued as government stock : s. 65; and, again, the market value of such stock is quite unknown. In these circumstances we have not attempted to incorporate into our precedent clauses to deal with this aspect of the matter.

Form of Mortgage of Freeholds[1]

By Harold Potter, ll.d., Barrister-at-Law

This legal charge made the day of 1948 Between A. B. of etc. (hereinafter called the Borrower, which expression shall also include the estate owner or estate owners for the time being of the fee simple of the mortgaged premises) of the one part and C. D. of etc. (hereinafter called the Mortgagee, which expression shall when the context admits include his executors administrators and assigns) of the other part.

Whereas :—

(A) The Borrower is the estate owner for a legal estate in fee simple of the property hereinafter charged for his own absolute use and benefit [subject as hereinafter mentioned but otherwise] free from incumbrances.

(B) The said property was on the 1st day of July 1948 used [as a single private dwellinghouse and curtilage] *or* [for the purposes more particularly described in the [First] Schedule hereto] and for such other purposes as such user as aforesaid would authorise under or by virtue of the Town and Country Planning Act 1947.

[(C) Since the 1st day of July 1948 aforesaid the said user of the said property has been altered [*or* modified] to include user for the purposes of — in accordance with a planning permission dated the day of .]

(D) The Mortgagee has agreed with the Borrower for the loan to him of the sum of £ upon having repayment thereof with interest thereon at the rate hereinafter mentioned secured in manner hereinafter appearing.

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[1] This form is drafted as a skeleton containing the special clauses for use with various common form mortgages.

Now in pursuance of the said agreement and in consideration of the sum of £ to the Borrower now paid by the Mortgagee (the receipt whereof the Borrower hereby acknowledges) THIS DEED WITNESSETH as follows :—

(1) [*Usual covenant to pay principal and interest.*]

(2) The Borrower as Beneficial Owner hereby charges by way of legal mortgage [ALL THAT piece or parcel of land situate in the City of Destruction containing in area be the same little more or less Together with the messuage or tenement and outbuildings erected thereon and known as Doubting Castle all which said premises are more particularly delineated in the plan [2] drawn on the margin hereof and thereon coloured red] *or* [ALL THOSE pieces or parcels of land situate in the Parish of Vanity Fair in the Slough of Despond more particularly described in the [First] Schedule hereto which said pieces and parcels of lands are more particularly delineated [but by way of identification only] in the plan drawn in the margin hereof and therein coloured green] [SUBJECT to the restrictions imposed by a planning permission dated the day of and made by *or as the case may be*] WITH the payment to the Mortgagee of the principal money interest and other money hereby covenanted to be paid by the Borrower.

(3) The said property is held at the date hereof for use [as a single private dwellinghouse and curtilage [including a garage]] *or* [for the purposes more particularly described in the [First] Schedule hereto] together with the right to use the said property for such other purposes as may now or hereafter be authorised in connection with such user aforesaid under or by virtue of the Town and County Planning Act 1947 or any Act for the time being amending or replacing the same.

(4) If the said property or any part thereof is at the date hereof subject to any restriction or other obligation [other than designation for compulsory purchase] [3] imposed under or by virtue of the Town and Country Planning Act 1947 whereby the said property or any part thereof cannot lawfully be used and enjoyed for any or all of the purposes hereinbefore contained such restriction or obligation shall be deemed

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[2] This should be a copy from the Development Plan if this exists, but it should be capable of identification with any plan on earlier title deeds.

[3] If land is subject to designation for compulsory purchase when mortgaged this exception seems necessary but not otherwise.

to be an incumbrance[4] made occasioned or suffered by the Borrower within the meaning of the covenant implied by the Law of Property Act 1925 by the Borrower being expressed to convey as Beneficial Owner.

(5) AND the Borrower hereby covenants with the Mortgagee and it is hereby agreed and declared as follows :—

(a) [*Insert the usual covenants to repair, insure, etc.*]

(b) And also will not at any time during the continuance of this security without the previous consent in writing of the Mortgagee erect make or maintain or suffer to be erected made or maintained on the premises hereby charged or any part thereof any building erection or improvement or make or suffer to be made any material change or addition whatsoever in or to the use of the land hereby charged or any building or buildings or erection thereon or any part thereof and also if the Mortgagee shall consent in writing as aforesaid will duly apply to the local planning authority as defined by the Town and Country Planning Act 1947 for any necessary permission to erect make or maintain such building erection improvement material change or addition or on behalf of the Mortgagee and all other the persons (if any) and will give to the Mortgagee notice of such permission if granted within days of the receipt of the same from the said planning authority And also the Borrower will at all times indemnify and keep indemnified the Mortgagee his estate and effects against all proceedings costs expenses claims and demands whatsoever in respect of the said application.

(c) And also will within days of the receipt of notice of the same by him give full particulars to the Mortgagee of any notice or proposal for a notice or order or proposal for an order given issued or made to the Borrower by a planning authority under or by virtue of the Town and Country Planning Act 1947 and if so required by the Mortgagee produce such notice to the Mortgagee and also will without delay take all reasonable or necessary steps to comply with any such notice or order And also will at the request [and cost] of the Mortgagee make or join with the Mortgagee in making such objection or objections or representation or representations against or in respect of any proposal for such a notice or order as the Mortgagee shall deem expedient.

(d) And also will not do or omit or suffer to be done or omitted any act matter or thing in on or respecting the premises hereby charged required to be omitted or done by the Town and Country Planning Act 1947 or which shall contravene the provisions of the said Act or any of them And will at all times hereafter indemnify and keep indemnified the Mortgagee against all actions proceedings costs expenses claims and demands in respect of any such act matter or thing contravening the said provisions of the said Act or any of them as aforesaid.

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[4] Such a restriction or obligation might not be technically an "incumbrance", but this clause should bring any breach of the obligation within the covenants for title.

(e) All costs charges and expenses properly incurred hereunder by the Mortgagee expressly including any costs charges or expenses incurred or paid by the Mortgagee by virtue of or in connection with any act matter or thing arising under or by virtue of the Town and Country Planning Act 1947 whether or not occasioned by any act neglect or default of the Borrower shall together with interest thereon at the said rate of £ per cent. per annum be charged on the property for the time being subject to this security and shall on the same being paid be repaid to the Mortgagee by the Borrower with interest thereon from the time of payment at the rate aforesaid and until such demand shall be made and complied with the Borrower shall in part payment of such interest pay to the Mortgagee interest at the rate aforesaid on the moneys so paid and for the time being not yet repaid on the respective days hereinbefore appointed for payment of interest on the said principal sum of £ Provided that the charge hereby conferred shall be in addition and without prejudice to any and every other remedy lien or security which the Mortgagee may or but for the said charge would have for the moneys thereby secured or any part thereof.

(f) In the event of any order for compulsory acquisition of the property hereby charged or any part thereof being made and confirmed under or by virtue of the Town and Country Planning Act 1947 the said principal sum of £ hereby secured shall be deemed to have called in and unpaid for three months on the date on which such order was confirmed as aforesaid and all the mortgagee's powers for the realisation and protection of the security hereby created shall become exercisable on such date as aforesaid.

IN WITNESS, ETC.

Assignments of Development Value[1]

By HAROLD POTTER, BARRISTER-AT-LAW

I

ASSIGNMENT WHERE NO CLAIM HAS BEEN MADE[2]

Recital

AND WHEREAS by the said agreement it was agreed that the Vendor would assign all rights and interest in and claim to any payment made or stock issued in respect of depreciation in value under or by virtue of the Town and Country Planning Act, 1947 (hereinafter called the right to development value), of the land hereby conveyed and would enter into the covenant hereinafter appearing.

Testatum

AND THIS DEED FURTHER WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid the Vendor AS BENEFICIAL OWNER hereby assigns unto the Purchaser ALL THAT the right to development value in [the said property] *or* [the said property comprised in the Schedule hereto] or any part thereof AND any interest or dividend payable in respect of the same TO HOLD the same unto the Purchaser absolutely.

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[1] The words "development value" though used in the Act (see *e.g.*, s. 58 (3)) are not defined and are not words of art, and the right (if any) to payment is described so far as possible in the terms used in the Act. The right to receive payment under the Section 58 Scheme vested in the person who on the appointed day was the owner of the interest in land in respect of which payment is to be made: s. 64 (1) and the right to receive such payment or any part thereof is transmissible by assignment or by operation of law as personal property: s. 64 (2).

Written notice must be given to the Central Land Board containing information to enable the Board to identify the land and the interest therein to which the notice relates before December 31, 1952: Claims for Depreciation of Land Values Regulations, 1948 (No. 902), reg. 7. It is the practice of the Board to require notice of assignment whether the assignment takes place before or after the claim on Form S. 1 has been made. After the notice of assignment has been properly given, the Board will permit the assignee to make or prosecute the claim in lieu of the assignor.

This and the next form are drafted for incorporation in conveyances on sale or assignments of leasehold but there is much to be said for keeping the assignment off the title altogether. All that is necessary in such case is to embody this or the next form in a separate deed with the necessary slight amendments.

For the form of contract, see *ante*, p. 119.

[2] This form is applicable whether the land conveyed is the whole in respect of which a claim may be made or a part only thereof.

AND the Vendor for himself his executors administrators and assigns hereby covenants with the Purchaser and his successors in title that he the Vendor will at all times hereafter at the request and cost of the Purchaser make or join in making any application or applications or take or join in taking any proceedings or do or concur in doing any act matter or thing (including the execution of transfers of any such stock as may be issued) such as may be requisite or necessary to claim substantiate or enforce such right or interest in the right to development value.[3]

II

ASSIGNMENT WHERE A CLAIM[4] HAS BEEN MADE: VARIATIONS FOR ASSIGNMENT OF PART

Recital

AND WHEREAS in respect of the land hereby conveyed [together with other land owned by him] the Vendor has made to the Central Land Board a claim in respect of the depreciation in value thereof by virtue of the Town and Country Planning Act, 1947 (hereinafter called the right to development value), but has received no payment in pursuance of such claim. AND WHEREAS by the said agreement for sale the Vendor agreed with the Purchaser to assign to him [one tenth share[5] of and in] the right to development value and to enter into the covenants hereinafter appearing.

Testatum

AND THIS DEED FURTHER WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid the Vendor AS BENEFICIAL OWNER hereby assigns unto the Purchaser ALL THAT [one tenth share of and in] the right to development value in the land hereby conveyed [together with other land owned by him] AND any interest or dividend payable in respect thereof TO HOLD the same unto the Purchaser absolutely.

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[3] Although the Board permit the assignee to make a claim (see note 1, *supra*), this covenant is desirable since it may be necessary to call on the assignor to supply further particulars or evidence.

[4] This claim must normally be made before March 31, 1949: Claims for Depreciation of Land Values Regulations, 1948, reg. 11. Extension of time may be granted to June 30, 1949, *ibid.*

[5] The share to be assigned is a matter of contract.

AND the Vendor for himself his executors administrators and assigns hereby covenants with the Purchaser and his successors in title that he the Vendor will not at any time hereafter do or omit or suffer to be done or omitted any act matter or thing whereby the said [one tenth share of and in the] right and interest of the Vendor in the payment should or might be charged lost destroyed or decreased AND that he the Vendor will at all times henceforth at the request [and cost] of the Purchaser do any act or take any proceedings or concur in doing any act or taking any proceedings such as may be requisite or necessary to substantiate or enforce such right and interest as aforesaid [or the said one tenth share of the Purchaser therein].

Practical Points

1. *Planning permission—development charge.*

In the following cases will planning permission be necessary? And will development charge be payable?

(a) A is the fee simple owner of a cottage in which she has resided for many years. After July 1, 1948, she decides to take in a lodger.

(b) B is the fee simple owner of Blackacre, a large mansion, in which he has had residing with him his son who is employed and who has paid a weekly sum towards his keep, thus apparently converting the house into a lodging house. B has since July 1, 1948, sold the house, and the purchaser proposes to take in a large number of paying guests or lodgers.

(c) C is the owner of a house and shop, the shop being on the ground floor front with living room behind, bedrooms on first floor. He now wishes to use the living room behind for shop purposes solely and convert one of the bedrooms into a living room.

(d) D is a doctor, and buys a house used for residential purposes only and carries on his practice from there.

(e) E sets up (1) a dancing academy, and (2) as a pianoforte teacher in a house hitherto used as a private residence. [G. B. & Co.]

ANSWER

(a) To take a lodger would probably not normally be considered a material change of use, but if any doubt is felt application for a decision in principle may be made under s. 17.

(b) It may be doubted whether a contribution to expenses by a member of a family makes him a lodger, but in any case, it could hardly be considered a material change of use. To use the house as proposed would be to convert it into business use. Planning permission would seem to be necessary, and liability to assessment to development charge would follow.

(c) The cubic capacity applied to shop purposes may be extended by 10 per cent. without liability to development charge, and probably so small an extension would not constitute a material change of use. A larger extension of shop use would necessitate planning permission and attract liability to assessment to development charge.

The conversion of a bedroom to a living room is not development.

(d) The change of use from a private residence to a professional residence may be considered a material change, and for this reason is often covered by lease covenants. The answer may be that whether or not the change of use is material and should be considered in relation to (a) the locality and (b) the effect on value. In an area where houses are used for the business of letting lodgings and apartments the institution of a professional use may not be a material change, but if it results in a substantial increase in value it would be difficult to argue that it was not a material change.

(e) It is presumed that the house is still used as a dwelling but that the businesses referred to are carried on in parts thereof. This may again be a matter of locality and effect on value. See previous answer. An application could be made under s. 17 for a decision in principle. [W. A. L.]

2. *Planning permission—development charge.*

A dwelling-house is requisitioned; the requisitioning authority uses the property as an office and then, after July 1, 1948, releases the premises. Can the owner carry on the office user without seeking planning permission and without the payment of development charge, providing that the Building Restrictions (War-time Contraventions) Act, 1946, or s. 75 of the Town and Country Planning Act, 1947, are not used against him? Alternatively, the above property is acquired by the requisitioning authority after July 1, 1948, and it is almost certain that the local planning authority will raise no objection to the office user as the house is in a road which is changing from residential to business. No physical alterations have been made by the requisitioning authority; should the compulsory purchase price be assessed on the business user or the dwelling-house user? [R. F. J. L. (1).]

ANSWER

The owner may continue to use the dwelling-house as an office subject to the power of the local planning authority to serve an enforcement notice not later than July 1, 1951. If no notice is served the use becomes regularised.

Alternatively, the owner may apply for planning permission to continue the use, and if this is granted, no development charge will be payable (s. 75 (7)).

The risks in doing this are (a) that permission may be refused, or (b) that temporary permission only may be granted, in which event development charge will be payable if and when it is renewed (s. 18).

In any event, the owner would be well advised to make a precautionary claim under Part VI of the Act, the restricted value for the purpose of s. 61 (2) being based on the non-contravening use before requisitioning, and according to the state of the property immediately before requisitioning (s. 89 (1)).

In the event of compulsory acquisition s. 51 (2) provides that it is to be assumed that planning permission would not be granted for any development outside the Third Schedule, and s. 51 (4) provides that unless development charge has been paid or none is payable under Part VIII of the Act, any permission actually given under Part III of the Act is to be ignored. Exemption under s. 75 (7) is exemption under Part VIII of the Act, and if permission were granted, compensation on compulsory acquisition would not be prejudiced.

If compulsory acquisition is likely and the granting of planning permission cannot be absolutely relied on, it would be unwise to apply for planning permission, as in the absence of permission the possibility of the planning authority not serving an enforcement notice would have to be taken into the value of the property as a business risk. It is implicit in s. 75 that the authority can only serve such a notice on planning grounds, and there would be no harm in awaiting action by the authority. If no enforcement notice is served prior to notice to treat it is because an application for a similar development would be granted, and the business risk of the purchaser is a negligible one. [W. A. L.]

3. *Development charge.*

In 1946 A bought a quarter of an acre plot of land for £200. He prepared a plan showing his proposed house, and included thereon, in dotted lines " proposed extension when regulations permit ". The portion on which he wished to build was edged in red, and complied with the statutory one thousand square feet. The plan was submitted, and the planning authority gave permission " for the erection of a house as per the attached plan ". No reference was made to any portion of that plan. The building licence was granted, the house was built and he was living therein by the end of 1946.

Will A be liable to pay a development charge, as and when he builds to his original full plan, which will be in excess of the one-tenth or 1,750 cubic feet? [W. & Son.]

ANSWER

If the planning consent to the house was given under interim development control under the 1932 Act, para. 10 of S. R. & O., 1946, No. 1621 (repeating a similar provision in earlier Interim Development Orders) enables an applicant to require a decision in principle subject to subsequent approval of details. The " dotted " indication of a future extension could be regarded as a submission in principle and the approval in principle would, it is thought, enable the owner to say that immediately before the appointed day the addition could have been erected without contravening planning control. It would, in these circumstances, seem to fall within s. 78 if, in view of the future extension, the building so far as erected has in some respect been left in an unfinished condition.

If the approval was under an operative scheme there is no provision for a decision in principle, but if the provision as to size and height of building, permitted site cover, use, etc., would not have been infringed, it would have been possible to complete the building (subject to approval of details) in conformity with a scheme, and s. 78 could be applied, provided again that the building is at present in some respect unfinished.

If these arguments cannot be applied to the case, then it may, perhaps, be contended that a planning application was made before January 7, 1947 (the questioner does not give the date of the application), in which case a detailed application for the extension should now be made under Part III of the 1947 Act as a preliminary to procedure under s. 80. [W. A. L.]

4. *Compulsory purchase.*

Under s. 52 of the 1947 Act, should the rent which a tenant might reasonably be expected to pay under the notional lease be assessed on the limited rent obtainable under the Rent Acts when there is a standard rent for a dwelling-house, which is owner-occupied at the time of acquisition and so does not come under s. 52 (5)? [R. F. J. L. (2).]

ANSWER

It is considered that the standard rent should be ignored. Reference to the Rent Restriction Acts is made in s. 52 (5), and if the standard rent were required to be adopted it would have been easy to say so.

An owner of a rent controlled property does not sell according to the standard rent, and s. 52 is designed only to eliminate scarcity value, not to authorise acquisition at 1939 rental values (repealed by s. 50).

Presumably, it is also intended that after January 1, 1954, vacant possession may be assumed, and not that the hypothetical tenant may be able to hold over as a statutory tenant, which would perpetuate valuation on a 1939 basis, otherwise s. 52 (5) might have said that no property within the Rent Restriction Acts should be deemed to convey the right to vacant possession. [W. A. L.]

5. *Development charge.*

B proposes to purchase for £8,000 a large detached property now used as a private dwelling-house, and to change the user to that of a commercial college. The District Valuer maintains that there is little demand for this type of property for use as a dwelling-house, but I have pointed out that the property is suitable for conversion into flats, and that the use of a dwelling-house for two or more dwellings does not give rise to a development charge. I intend to submit that there is also a demand for this type of property for hostel purposes, but it is not clear whether a charitable body, such as the Y.M.C.A. would be liable to pay a development charge for changing the user to that of a residential hostel, and I should be glad to have your comments.

A further point arises in that the adjoining house was used as a school for several years before the war and, in my opinion, this property was therefore ripe for development in this way before the passing of the Act. The position is quite clear in the case of land ripe for development, but I am not sure of the position regarding a building ripe for development because, in this case, it would not be necessary for plans to be deposited with the local authority. The only permission necessary would have been byelaw permission, and this would hardly have been withheld in view of the fact that it had been granted for the identical property adjoining. [E. N. H.]

ANSWER

The only issue in this question is whether the value of the land (including the buildings), with the benefit of planning permission to use as a commercial college or residential hostel, would exceed the value thereof without the permission, *i.e.*, as a private dwelling-house with its rights under the Third Schedule.

Under this Schedule the house can be divided into residential multi-occupation without liability to development charge, the change of use being covered by para. 2, and the physical alterations by para. 3 (it is presumed no enlargement in excess of 10 per cent. would be necessary).

The value without permission is what might reasonably be expected to be paid for the house with these rights under paras. 2 and 3, bearing in mind that a purchaser would deduct the estimated cost of any necessary works in arriving at the price he would pay. Similarly, the value with the planning permission would have to be arrived at with due regard to the estimated cost of any alterations. [W. A. L.]

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"*Planning Law*" *Notes*

Two major issues are emerging from the new planning law. The first relates to the price level at which undeveloped or partly-developed land is to change hands. The basic theory of the Act, enshrined in the Governing Principle of the Development Charge Regulations, demands that land shall "be freely and readily bought and sold or otherwise disposed of in the open market at a price neither greater, nor less, than its value for its existing use". The framers of the Town and Country Planning Act, 1947, expected that as soon as this basic theory was understood the price of undeveloped and partly-developed land would fall, and provided for this in the formula for calculating "restricted" and "unrestricted" values (s. 61 (5)) by prescribing January 7, 1947 (the date when the Town and Country Planning Bill was first introduced) as the date by reference to which the price calculation was to be made. There is plenty of evidence that land suitable for early development is changing hands at prices which do not show any signs of being affected by the Act. The letters published in the Correspondence column of this issue are typical. Sellers and buyers of land have persisted in their own choice of incentives whatever the Minister and the law might say, but the time has apparently come for them to be taught differently. If kindness will not do it other methods must be tried and Sir Malcolm Eve's statement on p. 506, *post*, will be read with the liveliest interest by all subscribers to this Journal.

The second issue is whether the Act has made any difference to conveyancing. Dr. Harold Potter, in this Journal and elsewhere, has developed the view that the Town and Country Planning Act, 1947, on July 1, 1948, converted the absolute dominion of the owner of the fee simple into a specific use, the exact scope of which in relation to any property is partly a matter of fact and partly a deduction of law. From this, it follows that considerable alterations in the forms of conveyances, leases and, above all, mortgages are necessary. The opposing view is based upon the (very reasonable) argument that if a basic change in land tenure were intended then it might be expected that some express provision should have been made amending the property legislation of 1925.

This is a problem which must eventually find its solution in the Courts, but a growing body of practitioners is coming to agree with Dr. Potter's alternative pragmatic approach to the problem and his conclusion that good conveyancing demands that preliminary inquiries should be a good deal more elaborate than formerly, that it is not desirable that the vendor should, by a blanket condition of sale, stifle all proper requisitions and that the covenants for title should expressly extend to the authorised use to which the property may be put.

It may be added that practitioners are entitled to resent the way in which so awkward a problem has been flung at them for immediate practical solution without any apparent awareness on the part of the framers of the Act that the problem exists at all.

Many requests are received for replacements for lost parts. Stocks of back parts are nearly exhausted and it will in future not be possible for lost parts to be replaced. Subscribers are therefore recommended to obtain the special Cordex binders made for the Journal and to place their parts in these binders as soon as they are received.

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Owing to shortage of paper the Publishers are reluctantly compelled to refuse requests for extra copies of particular issues of the Journal.

Control of Land Use

By DESMOND HEAP, LL.M., L.M.T.P.I.,

Comptroller and Solicitor to the Corporation of the City of London

I. Planning Law and the Meaning of "Development" (*ante*, p. 7).

II. Planning Law and Development Permission (*ante*, p. 63).

III. Planning Restrictions and the Recovery of Compensation (*ante*, p. 124).

IV. Further Observations on the Meaning of "Development" and the Need for and Methods of Obtaining Planning Permission therefor (*ante*, p. 208).

V. Planning and the Designation, Development and Disposal of Land by Local Authorities (*ante*, p. 292).

VI. **Advertisements and the Preservation of Trees, Special Buildings and Amenities.**

VII. Planning Control and its Enforcement.

VI. Advertisements and the Preservation of Trees, Special Buildings and Amenities

(Continued from p. 382, *ante*)

Preservation of Trees

14. Statutory sanction to the legendary exhortation, "Woodman, spare that tree", derives from the Town and Country Planning (Interim Development) Act, 1943, under which interim preservation for trees and woodlands could be obtained by means of an Interim Preservation Order pending preservation on a more permanent basis under the provisions of an operative planning scheme made under the Town and Planning Act, 1932. The object of an Interim Preservation Order was to prevent the destruction of trees and woodlands in anticipation of the coming into force of the appropriate controlling provisions of the operative planning scheme.

Under the 1947 Act statutory planning schemes are replaced by statutory development plans, and provision is made not merely for interim preservation of trees and woodlands but for their permanent preservation by means of Tree Preservation Orders, which are Orders made by local planning authorities and confirmed by the Minister of Town and Country Planning and which operate quite independently of any development plan whether in course of preparation or in operation (s. 28).

Before making a Tree Preservation Order a local planning authority must be satisfied that it is expedient so to do *in the interests of amenity* (s. 28 (1)). In other words, amenity considerations are the only relevant factors for consideration in connection with the making of a Tree Preservation Order.

15. When in force the Order will control the cutting down, topping, lopping or wilful destruction of trees (s. 28 (1) (*a*)), and may also provide for the replanting of any woodland area which is felled in the course of forestry operations permitted by, or under, the Tree Preservation Order itself (s. 28 (1) (*b*)) and for the payment by a local planning authority of compensation in respect of damage or expenditure caused or incurred in consequence of any refusal of consent by the local planning authority to the cutting down, topping or lopping of trees protected by the Order or arising out of the granting of any such consent subject to conditions (s. 28 (1) (*d*)).

16. The procedure for the making of a Tree Preservation Order is dealt with in the Town and Country Planning (Tree Preservation Order) Regulations, 1948 (No. 1436) (*ante*, p. 322), whereby the Order may be made in such form as the local planning authority may determine (reg. 3 (1)), but must include a map drawn to the scale specified in reg. 3 (2), and in forwarding the Order to the Minister the authority must state their reasons for making it (reg. 4 (*a*) (iii)).

When the Order has been made by the local planning authority notice by advertisement in a newspaper circulating in the locality in which the trees or woodlands are situated (reg. 2 (1)) must be given and a certified copy of the Order placed on deposit for public inspection so that objectors to the Order may make appropriate representations in writing to the Minister within twenty-eight days from the publication of the advertisement (reg. 4 (*b*)). Every objection must state both the particular trees or woodlands to which it refers and also the grounds of the objection, and unless it does these things and is received by the Minister within the twenty-eight days above mentioned, it will not be " duly made " (reg. 5).

17. In addition to the foregoing notice by advertisement the local planning authority must serve a copy of the Order upon (a) owners and occupiers of land affected by the Order,

and (b) on any other person known to them as being entitled to fell any trees or woodlands specified in the Order or to work by surface workings any minerals in the land affected by the Order, and with the copy of the Order there must also be served a notice stating the Order has been made and submitted to the Minister, naming the place where it can be inspected by the public and stating that objections to the Order may be made to the Minister within twenty-eight days of the service of the notice (reg. 4 (*c*)).

18. Before confirming a Tree Preservation Order the Minister must take into consideration any objections to it which have been (as mentioned above) " duly made ", and if he holds a local inquiry into the matter (and he is not obliged to do so) he must also take into consideration the report of the inquiry (reg. 6).

19. If any person contravenes the provisions of a Tree Preservation Order he is liable on a summary conviction to a fine not exceeding £50 and in the case of a continuing offence to an additional fine not exceeding 40s. per day (s. 28 (6)).

Building Preservation Orders

20. Orders for the preservation of buildings of special architectural or historic interest derive from the original provisions in that behalf contained in the Town and Country Planning Act, 1932, s. 17, the major defect of which was that whilst under the section the *demolition* of a building could be prohibited there was no means of prohibiting either the *alteration* or the *extension* of a building, although it is possible by means of alterations and extensions so to alter the character of a building that from the architectural or historical point of view the building might just as well have been demolished. This defect was remedied by s. 43 of the Town and Country Planning Act, 1944, which also added a penalty for any breach of an Order made under s. 17 of the 1932 Act. The combined effect of s. 17 of the 1932 Act and s. 43 of the 1944 Act (both of which are now repealed) is contained in s. 29 of the 1947 Act, under which a Building Preservation Order can be made which will operate independently of any development plan whether in course of preparation or in operation under the Act. Such an Order can be made by a local planning authority (s. 29 (1)) and also by a county district council (s. 29 (8)), by the Common Council of the City of London (s. 114 (2)) and by the council of a metropolitan borough (*ibid.*).

21. Building Preservation Orders can be made only in respect of buildings of special architectural or historic interest (s. 29 (1)), but in this connection it should be remembered that " building " includes structures and erections (s. 119 (1)). Thus, it is submitted that a Building Preservation Order can be made not only in respect of buildings, as that expression is popularly understood, but also in respect of such matters as ancient market crosses, village stocks, pumps, fountains, milestones, gateways and the like matters, provided always, of course, there is attached to them some special architectural or historic interest.

Before making a Building Preservation Order it must appear to the local planning authority to be expedient so to do (s. 29 (1)), though s. 29 (unlike s. 28, relating to the making of Tree Preservation Orders) does not specify the grounds on which the authority is to base their judgment when deciding whether or not it is expedient to make the Order. Under s. 28 the test is, by the express provisions of the section, to be related to the " interests of amenity ", and it is submitted that (notwithstanding the lack of express guidance in s. 29) these are the interests (certainly the paramount ones and probably the only ones) which should be the motivating factors in the making of any Building Preservation Order by a local planning authority.

The effect of a Building Preservation Order is to restrict the *demolition*, *alteration* or *extension* of the building to which it relates (s. 29 (1)). The Order requires confirmation by the Minister (s. 29 (3)) and compensation is payable in respect of damage or expenditure caused or incurred to any person in consequence of the Order (s. 29 (2) (*c*)). Any person contravening the Order is liable to a penalty not exceeding £100 (s. 29 (5)) and the local planning authority may require the reinstatement of the building (s. 29 (2) (*b*)). Urgent works in the interest of safety or health or the preservation of property may be carried out on a building which is the subject of a Building Preservation Order provided notice of the works is given to the local planning authority who made the Order (s. 29 (6)).

22. The procedure for the making of a Building Preservation Order is dealt with in the Town and Country Planning (Building Preservation Order) Regulations, 1948 (No. 1766) (*ante*, p. 414) which came into operation on August 16, 1948. Under these Regulations the Building Preservation Order is to be substantially in the form set out in the Schedule to the

Regulations (reg. 3 (1)) and in forwarding the Order and any accompanying plan to the Minister for confirmation, the authority making the Order must include a statement of the grounds on which they consider that the Order ought to be confirmed (reg. 4 (1)). If the Order is made by a county council a copy of the Order, plan and statement must be sent to the council of the county district where the protected building is situated (*ibid.*) and, conversely, if it is a county district council which makes the Order a copy of the aforesaid matters must be sent to the appropriate county council (*ibid.*). Before a Building Preservation Order is made by the Common Council of the City of London or by a metropolitan borough council, consultations must be had with the London County Council (reg. 3 (2)).

When the Building Preservation Order has been made, notice must be given by advertisement in a newspaper circulating in the locality in which the protected building is situated (reg. 2 (1)) of the submission of the Order to the Minister (reg. 4 (2)) and the Order must be open for public inspection at times and places specified in the advertisement so that objections or representations in writing with reference to the Order may be sent to the Minister within twenty-eight days of the publication of the advertisement (*ibid.*).

In addition to the foregoing notice by advertisement the authority making the Order must serve a copy of the Order (together with any accompanying plan) upon both the owner and the occupier of the building affected (reg. 4 (3)) and also serve on such persons a notice of the submission of the Order to the Minister for confirmation and stating that objections or representations may be made to the Minister within twenty-eight days of the service upon them of the notice (*ibid.*).

Before confirming a Building Preservation Order the Minister must take into consideration any objections or representations in writing which he has received within the twenty-eight day periods above mentioned (reg. 5), and if he holds a local inquiry into the matter (and he is not obliged to do so) he must also take into consideration the report of the inquiry (*ibid.*).

23. With a view to guiding local planning authorities in the preservation of buildings of special architectural or historic interest the Minister is to compile lists of such buildings (s. 30 (1)) and supply copies of such lists to councils of the county boroughs and county districts affected (s. 30 (2)).

Any copy so supplied is to be registered in a new Part (to be known as Part X) of the register of local land charges (s. 30 (3)) kept under the Land Charges Act, 1925, in the manner prescribed in rr. 5 and 6 (2) of the Town and Country Planning Acts, 1944 and 1947 (Registration of Orders and Lists of Buildings) Rules, 1948 (No. 1213) (*ante*, p. 242).

The owner and occupier of a listed building must be informed by the Minister that the building has been listed (s. 30 (4)), but the Minister is not obliged to consult either the owner or the occupier before listing any building though he must consult with persons having special knowledge of or interest in, such buildings (s. 30 (5)).

The demolition, alteration or extension of a listed building cannot be undertaken until at least two months after notice thereof has been given to the local planning authority (s. 30 (6)) although urgent works in the interests of safety or health are permitted (*ibid*). Any person contravening these provisions is liable to a penalty not exceeding £100 (s. 30 (9)) and the local planning authority may require the reinstatement of the building (s. 30 (8)).

Control of Waste Land

24. S. 33 of the 1947 Act, relating to the proper maintenance of gardens and vacant sites, is a comparatively simple section which breaks entirely new ground in planning law.

From time immemorial tillers of the soil in small gardens, allotments, curtilages and places where they dig have ever jettisoned the interminable stones, weeds and rubbish which long-suffering gardeners are damned constantly to find "in, on, over or under" (to quote s. 12 (2) of the Act) their land, onto any vacant plot which they were lucky enough to find in convenient juxtaposition to their own. The wording of s. 33 is such that one cannot resist the temptation to suppose that it was enacted for the very purpose (*inter alia*, no doubt) of striking a mortal blow at this gay, time-honoured freedom for the amateur gardener!

By this short little section a local planning authority, if serious injury to amenity is caused by the condition of any garden, vacant site or other open land, may serve on the owner and occupier of that land (*i.e.*, not necessarily the person who threw the stones!) a notice requiring abatement of the injury by the taking of such steps as may be specified in the notice within such period as may be so specified.

25. With respect to the enforcement of a s. 33 notice, the provisions of s. 23 (2) (4) and (5) and of s. 24 of the 1947 Act (relating to the taking effect of enforcement notices, the lodging of appeals against the same to courts of summary jurisdiction and the taking by a local planning authority of appropriate action in case an enforcement notice is disobeyed) are made to apply (s. 33 (2)) subject to the modifications set out in reg. 7 of the Town and Country Planning (General) Regulations, 1948 (No. 1380) (*ante*, p. 315).

What's the Use !

" Use " in relation to land is not positively defined in the Town and Country Planning Act, 1947. Negative definitions exclude building or other operations (s. 119 (1)) and mining operations (T. & C. P. (Minerals) Regulations, 1948 (No. 1521), reg. 3).

" Existing use " is not defined by the Act and occurs in the Act only in the headings in Schedule III. It is used, in the statement of the General Principle, in the T. & C. P. (Development Charge) Regulations, 1948 (No. 1189), Schedule para. 1. It is freely used in discussing the Act, *e.g.*, in Ministry of Health Circular 129/48 local authorities are enjoined to " pay the strictly appropriate price for land, that is, the current 'restricted' ('existing use') value ". It may be defined as such use as was lawful on July 1, 1948 and did not involve the payment of a development charge. Actual use on July 1, 1948, may have been in contravention of planning control and is not the same as existing use.

Uses which constitute development are those which involve " the making of any material change in the use of buildings or other land " (s. 12 (2)) unless excluded by s. 12 or by the T. & C. P. (Use Classes) Order, 1948 (No. 954). " Material change " is not defined. Nor is " temporary " use or " normal " use (s. 12 (5)) : see *ante*, p. 385.

Uses and changes of use which do not require express planning permission are specified in the T. & C. P. (Use Classes) Order, 1948 (No. 954) and the T. & C. P. (General Development) Order, 1948 (No. 958).

Uses and changes of use which do not attract a development charge are specified in Schedule III to the Act, the T. & C. P. (Use Classes for Third Schedule Purposes) Order, 1948 (No. 955) and the T. & C. P. (Development Charge Exemptions) Regulations, 1948 (No. 1188).

Planning as Affecting Interests in and Value of Land

By E. J. Rimmer and J. Stuart Daniel, Barristers-at-Law

I. Main Consequences of the Act of 1947 (*ante,* p. 15).
II. Compulsory Acquisition (*ante,* p. 71).
III. New Principles of Compensation for Compulsory Acquisition (*ante,* p. 132).
IV. Claims on the £300 million Fund (*ante,* p. 222).
V. Development Charges (*ante,* p. 300).
VI. **Mineral Rights and other Special Cases.**

VI. Mineral Rights and other Special Cases

1. It is not surprising that an Act of the complex and revolutionary character of the Act of 1947 should require to be eased and modified in its impact on various special types of case. This process is provided for by Part VIII of the Act and the special provisions included in that Part of the Act fall broadly into two categories: first, transitional measures designed to ensure continuity of planning control and to prevent undue hardship to developers caught *in mediis rebus* by the Act; secondly, provisions of a permanent nature which are required to meet cases where the special nature of the ownership or the development make the normal provisions of the Act unsuitable.

2. The first category is largely concerned with the effect of previous planning permission, and these provisions have already been analysed in this Journal (*ante*, pp. 43–46 and 69, 70). It is only proposed in this article to touch shortly on " unfinished buildings " (s. 78) and " dead ripe land " (s. 80). The second category will require fuller treatment and special reference will be made to minerals, but it is not proposed to deal with the " special ownerships ", *e.g.*, local authorities, the Crown or the Coal Board, since their cases will be of little interest to the private owner for whom this series of articles is primarily intended.

S. 78.—UNFINISHED BUILDINGS

3. This section virtually antedates, to before July 1, 1948, the completion of a building unfinished at that date. In the first place, provided that completion would have conformed

with previous planning control and that any permission required under the Restriction of Ribbon Development Act, 1935, had been obtained, permission for completion is deemed to have been granted under Part III of the Act. It is important to note that by s. 78 (2) any conditions previously imposed are kept alive in such a case; and that permission to use the building when completed will also be assumed—for any purpose previously sanctioned, or for the purpose for which the building was designed. By s. 78 (3) no development charge will be payable and no claim on the £300 million can be made in respect of that particular development. The section applies to the alteration as well as to the erection of buildings, but does *not* apply, as has already been pointed out by Mr. Heap (*ante*, p. 70), to a partially developed estate: it is "a building" and not "a development" which is protected. The section does not in terms cover a case where a building has been completed but its use not instituted before the appointed day. It is submitted, however, that if such a case arose in practice the general intention of the section could be prayed in aid so far as the subsequent institution of the use was concerned.

S. 80.—Dead Ripe Land

4. As was emphasised in the first of these articles (*ante*, p. 16), in order to qualify for the special protection of s. 80 land must be "ripe for development" in the special sense prescribed by the section. Land ripe for development in this sense has come to be known in planning jargon as "dead ripe"—as opposed to "near ripe" land, which latter qualifies for preferential payments out of the £300 million. To be "dead ripe", land must satisfy the following requirements:

(a) Planning permission must have been given under Part III for the erection, extension or alteration of buildings, or must be deemed to have been so granted, *i.e.*, as a result of interim permission granted since July 21, 1943.

(b) The development value of the land must be wholly or mainly attributable to the prospects, at the appointed day, of the development so permitted.

(c) A building contract must have been made in relation to this development between January 7, 1937, and January 7, 1947, and be still in force on the appointed day, OR

(d) A bye-law submission or building application must have been made in respect of the development within the same period.

These requirements are clarified by the definitions in s. 80 (3). In particular it should be noted that a "bye-law submission" means a submission of the "plans of the buildings proposed to be erected" (so that lay-out plans will not suffice for this purpose), and a "building application" means an application for permission to build under planning or other legislation, accompanied by plans of the same character as above.

It is not necessary that the building contract, bye-law submission or building application should have been made by the applicant for a certificate, provided it was made by a person who was interested in the land at the time of making it.

It is important to realise that the planning permission and the contract, bye-law submission or building application must refer to the same application.

4A. The application for a certificate can only be made when a valid planning permission for the development is in existence. This may be either a permission granted since July 1, 1948, under the Act (*i.e.*, by the local planning authority or under a development order made by the Minister), or an interim development permission granted since July 21, 1943, under an interim development order made under s. 10 of the Town and Country Planning Act, 1932, and which is still in force.

Application is made on Form L.R.D. 1, obtainable on request from The Secretary, The Ministry of Town and Country Planning, 32 St. James's Square, London, S.W.1, or from a Regional Office of the Ministry (*ante*, p. 139).

The application must be completed in duplicate and *made before July 1, 1949.*

5. If the Minister is satisfied that all the requirements are fulfilled he must, on application made within a year of the appointed day, certify accordingly. The development in question will then escape development charge and its value will be excluded from the calculation of development value for the purposes of a claim on the £300 million. If the Minister considers that the permission should be revoked he may postpone issuing the certificate pending proceedings for revocation, and if these are successful the certificate need not be issued. For this reason applicants for a certificate are advised by the Central Land Board to make an S. 1 claim on

the £300 million in addition to applying for a certificate so that if, for any reason the certificate is not granted, there is no risk of being out of time for making the S. 1 claim.

The financial results of a certificate in the case of "dead ripe" land will generally be much the same as in the case of "near ripe" land (as to which, see the Central Land Board's Explanatory Pamphlet, *ante*, p. 394). In the first case there will be neither development charge nor claim on the £300 million; in the second case there will be both, but they will cancel each other without money changing hands. It must be remembered, however, that there will be a "ration" of "near ripe" land whereas that which is "dead ripe" will have a statutory right to a certificate whatever its area.

6. The anomalous effect of this section on compensation for compulsory acquisition in various types of case has already been discussed (*ante*, p. 169).

S. 81. MINERAL WORKINGS

7. The expression "Minerals" is defined in s. 119 as including "all minerals and substances in or under land of a kind ordinarily worked for removal by underground or by surface working: provided that it shall not include peat cut for purposes other than sale".

8. The application of the Act to the winning and working of minerals bids fair to become one of the most complicated departments of planning law. While the principle has been maintained that development value must pass from owner to State, it has perforce been recognised that the working of minerals, constituting as it does a continuous and perhaps almost endless development, requires special treatment. Thus s. 81 is almost entirely enabling. It begins by applying the provisions of the Act to the working of minerals subject to such adaptations and modifications as may be prescribed by Regulations. Sub-ss. (2) and (3) are concerned with matters which may or shall be provided for in the Regulations. By sub-s. (4), when a development plan provides that any land is to be used for working minerals, then, again subject to modification by Regulation, the Mines (Working Facilities and Support) Act, 1923, is applied. Sub-s. (6) excludes from the operation of the section and of Regulations made under it the working of minerals mentioned in para. 5 of the Third Schedule, that is to say, minerals worked on agricultural land and reasonably

required for agricultural purposes. Minerals vested in the National Coal Board are also excluded.

The Minerals Regulations, 1948, *ante*, p. 330, came into operation on July 1, 1948. A helpful Explanatory Memorandum dealing with these and the Modification of Mines Act Regulations, 1948, *ante*, p. 332, has been issued by the Ministry. It is not proposed here to analyse the Regulations exhaustively but merely to stress the salient points.

Meaning of "Use"

9. Reg. 3 (1) of the Minerals Regulations provides that for the purposes of the Act "use" in relation to land is not to include the use of land for mining operations. This does not in any way impinge on the principle that mining is a development, but it does mean that the several provisions of the Act which refer to "use" only, and not development as such, will not apply to mining operations. One important example, to which attention is drawn in the Explanatory Memorandum, is that of s. 12 (5) which dispenses with the necessity for planning permission for certain resumptions of use. In the case of mining operations therefore, it will presumably be necessary to obtain planning permission for such resumptions. The proviso to Reg. 3 (1) makes four exceptions to this limited definition; that is to say, in the following cases "use" will include mining operations:

(a) S. 14 (2) (*b*). Permission may be granted for a limited period only and may be conditional on removal of works and reinstatement of land at the expiration of the period.

(b) S. 23 (2) and (3). Enforcement notices may be served subject to the normal safeguards.

(c) S. 24 (3). Disregard of an enforcement notice will involve liability for the normal penalties.

(d) S. 72 (2). Development charge may be determined in respect of the use of land for a specified period.

Permission to Develop

10. The continuance of mining operations is in itself a development within the definition in s. 12 (2) and therefore it will be necessary in most cases to obtain permission under Part III of the Act. If, however, a permission granted under an interim development order between July 21, 1943, and the appointed day was still in force immediately before the appointed day, planning permission will, in virtue of s. 77 (1),

be deemed to have been granted under Part III. If there is no such permission in force, but the conditions mentioned in Class XIX of the First Schedule to the General Development Order, 1948, *ante*, p. 166, are satisfied, then there will be a period of grace of four or at the most six months after July 1, 1948, in which to make an application under Part III. If an application is made development may continue until it has been dealt with. The local planning authority may take eighteen months to deal with this type of application (see Art. 5 (3) of the Order, *ante*, p. 155), since it is intended that they shall have enough time to review and define the planning position in their area in relation to existing workings.

11. It should be noted that Class XIX is concerned with cases where mining operations were being carried out before the appointed day under permissions other than those specified in s. 77 (1). A new developer will not, of course, be able to start operations until he has actually obtained permission.

Development Charge

12. By Reg. 4 (1) when on the appointed day a mineral undertaker has an interest in land entitling him to win or work minerals no development charge will be payable for those operations for a period of three years from that date New developers will have to pay a charge, but as regards existing workings this three years' moratorium gives both the Central Land Board and the industry an essential breathing space. In effect, it constitutes *pro tanto* an application to minerals of the " dead ripe " principle.

13. When the charge comes to be assessed the fundamental principle will still obtain, that is to say that the charge will be based on the difference between the value of the land with the permission to work minerals and its value without that permission.

The Board may, if they think fit, levy a single capital payment. On the other hand, under Reg. 8 (1), they may levy a charge on a royalty basis by reference to the amount of minerals got from time to time, or to the amount of finished articles produced (*e.g.*, bricks from clay), or by any other method appropriate to the case. In deciding what method to adopt the Board may take into account representations from the applicant. The Board may require periodical returns and other information in order to ensure that the charge is being properly paid, but this information will be treated as confidential. In fixing the charge the Board will take into account the fact that the land may be rendered useless for other purposes, and any liabilities for restoration (see House of Commons Official Report, June 28, 1948, col. 1956, and para. 17 of Form D.1 (Minerals)—the form of application for determination of development charge for mineral working).

14. The charge will be paid by the person carrying out the development. If, therefore, mining operations are carried on under a mining lease some adjustment will be necessary in order to secure fulfilment of the principle that development value shall pass from owner to State. Reg. 9 (1) provides that in such a case the royalty or other payment made under the lease may be varied by a tribunal which is to be appointed by the Lord Chancellor. Such adjustment should leave the developer in much the same position as previously, but he will pay to the Board as development charge that proportion of the royalty which represented development value. The owner will presumably be left with payments under the lease sufficient to compensate him for damage to existing use value, and he will be entitled now to make his claim on the £300 million for his prospective loss.

Claims on the £300 Million

15. These claims will be calculated on the ordinary basis, that is to say, the development value will be determined on the difference between the unrestricted and restricted value, or, roughly speaking, the value of the land if the Act had not been passed and the value if no further mineral working was permitted. By Reg. 4 (2) the minerals worked during the three years exemption will be deemed to have been worked before the appointed day and their value will be disregarded for the purpose of the owner's claim.

By Reg. 7 the value of buildings, plant and machinery as such must be excluded from the calculation of restricted and unrestricted values, but may be taken into account in so far as their presence increases the value of the interest, *i.e.*, the value of unworked minerals.

16. It is now fairly clear that there will be a "near-ripe" scheme for minerals which will ensure preferential payments to certain classes of owner. Lord Henderson has stated (see House of Lords, Official Report, June 3, 1948, col. 244):

> "Mineral undertakers who own their land will have to be given some form of preferential treatment in the £300 million Scheme, and it is intended to have a near-

ripe scheme for minerals on the same lines as the near-ripe scheme which has already been announced for builders".

In the House of Commons (see Official Report, June 28, 1948, col. 1935), Mr. King, the Parliamentary Secretary to the Ministry, stated that the near-ripe scheme would take account of another type of claimant, namely, the leaseholder who enjoys a profit royalty, that is, a lease under which payments made to the landlord have been less than the development value which will now be chargeable.

A form supplementary to S. 1 (see para. 17 thereof) will have to be completed by those who claim for loss of mineral value, but at the time of writing this has not been issued by the Board. (See also note on p. 352, *ante*.)

17. The Regulations also provide for compensation for abortive expenditure in certain cases (Reg. 10), and make certain special provisions in regard to the assessment of compensation on compulsory acquisition (Reg. 5).

The Minister has emphasised in the House of Commons that these Regulations are only an interim solution to the problem (see Official Report, June 28, 1948, col. 1951), and that further Regulations may be expected after the completion of discussions between the industry and the Board.

The Modifications of Mines Act Regulations

18. These Regulations are made in pursuance of s. 81 (4) of the Act. The "Mines Act" is the Mines (Working Facilities and Support) Act, 1923, under which the Railway and Canal Commission could grant rights to work minerals which might otherwise be left permanently unworked. The Commission had to be satisfied that the working would be in the national interest and the undertaker had to have an interest in the minerals or the adjoining minerals. The main effect of these Regulations is that where a Development Plan provides for land to be used for mineral working then, if there is danger that the minerals will not be worked in accordance with the plan, the Commission shall assume that the working would be in the national interest and may grant working rights to any person—whether he has an interest in the minerals or not. Compensation to the owner is to be assessed on the basis of compulsory acquisition under Part IV.

S. 85: CHARITABLE TRUSTS

19. It must be emphasised in the first place that the concessions given by this section only extend to land held on

charitable trusts, or for ecclesiastical or other charitable purposes, if the land is actually used for or in connection with such purposes. Land whose profits are applied to such purposes but is not itself so used will not come within the section.

Land covered by the section will escape development charge so long as the development is for the purpose for which the land is held, and will earn no right to a payment out of the £300 million (sub-s. (2)).

If land subsequently ceases to come within the section then no development charge will be payable in respect of development by which it is made to correspond with the prevailing use of adjacent land, provided that planning permission for this development has been obtained while the land is still covered by the section (sub-s. (3)). In other words, if the trustees or owners sell the land they will be able to obtain a price which includes a reasonable development value and this will be so even if the land is compulsorily acquired (sub-s. (4)).

20. By sub-s. (5) land may be brought within the section by direction of the Minister if he is satisfied, on application being made within three years of the appointed day, that:

(a) the land was held for the prescribed purposes on the appointed day but not so used, and

(b) proposals for its future use make it reasonable that the land should be treated as having been so used for the purposes of the section.

Land held by the National Trust is only covered by the section if it is held inalienably (sub-s. (6)).

S. 86: LAND SUBJECT TO CLAIMS FOR BETTERMENT UNDER OTHER ACTS

21. This section is designed to avoid the payment of a double development charge in certain cases.

If, as a result of development after the appointed day, a local authority become entitled under local Acts (or under s. 48 of the Act of 1947) to a payment in respect of works which they themselves have carried out (*e.g.*, street works), then this payment must be taken into account in fixing the development charge. If the payment itself is to be calculated by reference to increase in value of the land then the provisions of Part VII of the Act are to be disregarded in the calculation.

S. 89: REQUISITIONED LAND

22. This section enacts the special assumptions which are to be made in the case of requisitioned land for the purposes of claims on the £300 million. The assumptions are somewhat similar to those provided for by s. 54 in the case of compensation for compulsory acquisition (*ante*, p. 137). Development value is to be calculated as if on the appointed day the land had been in the state in which it was immediately before the period of requisition began, but adjustments and allowances are to be made for development during the requisition in respect of which the owner has made payment or received compensation.

S. 91: LAND IN PROCESS OF COMPULSORY ACQUISITION

23. This section clarifies the position with regard to claims on the £300 million in respect of land in various stages of compulsory acquisition. Sub-ss. (1) and (2) have already been dealt with in this series of articles (see p. 224). Their effect is, briefly, that if the purchase price includes development value, (which it only can if notice to treat was served before the passing of the Act) there is no right to receive a payment; but if it does not, then the right to make a claim is preserved to the owner even though the purchase was completed before the appointed day.

Sub-s. (3) applies to all cases when notice to treat was served after the passing of the Act irrespective of the date of completion. It provides that if the compensation falls to be calculated by reference to s. 52 (the " notional lease "), s. 53 (land attracting converted value payments) or s. 54 (requisitioned land) then the provisions of those sections shall apply equally to the calculation of the restricted and unrestricted values for the purpose of a claim on the £300 million.

To take an example: compensation on purchase may be reduced by the assumption of the " notional lease ". In such a case a notional lease will be similarly assumed in fixing the restricted value for the purpose of a claim, with the result that the payment out of the fund will be proportionately increased. Corresponding assumptions are similarly to be made in the case of acquisition of war-damaged land where compensation is based on equivalent re-instatement.

Sub-s. (4) extends the operation of the section, subject to certain exceptions, to cases where land is acquired by agreement by authorities or persons empowered to acquire it compulsorily.

Notes on the General Development Order, 1948

[NOTE.—The Town and Country (General Development) Order, 1948, is printed in full at p. 149, *ante.*]

Art. 2 (*interpretation*). The definition of " building " is different from that contained in s. 119 (1) of the Act.

Art. 3 (*permitted development*). Para. (1) reserves from the permission certain development of the nature of that over which control was previously exercised under the Restriction of Ribbon Development Act, 1935.

The effect of para. (2) is that if, *e.g.*, permission has been given for a factory on condition that an area of land around the factory buildings is kept entirely clear of development, that condition will operate to prevent permitted development of Class VIII from being carried out on that land.

Art. 4 (*directions restricting permitted development*). Local planning authorities are asked to give notice to the War Damage Commission at Devonshire House, Piccadilly, London, W.1, of any direction made by them affecting permitted development of Class XI : War-damaged buildings, works and plant (Ministry of Town and Country Planning Circular, No. 47, para. 15 (*a*)).

Art. 5 (*applications for permission*). The period of three months is specified in para. (3) (*b*) in order to enable the local planning authority to consult with the Minister of Transport in accordance with Art. 7.

As regards para. (5), attention is drawn to the suggested procedure in Circular No. 41, Appendix Part. IV.

Art. 8 (*development not according with the development plan*). It has been stated (Explanatory Memorandum on the General Development Order, p. 8), that " it is anticipated that [this Article] will be used only for minor, but urgent, developments which would not entail a substantial departure from the Development Plan such as would call for an amendment of the Plan under s. 6 (2) of the Act, and which cannot await the normal quinquennial amendment under s. 6 (1) ".

Art. 9 (*consultation as to applications for permission*). The Ministry of Town and Country Planning have suggested that consultation with various bodies or individuals not mentioned in this Article will sometimes be desirable. For example, the appropriate Catchment Board should be consulted about any proposed development which seems likely to affect the land drainage of the area, whilst in the case of a proposal affecting land dedicated under the Forestry Act, 1947, the local planning authority should consult with the Forestry Commission.

The Ministry of Transport have suggested that, in addition to the consultation provided for in Art. 9 (1) (*c*), local planning authorities should consult local highway authorities who are not planning authorities about proposed development which

(a) may obstruct the view of road users at bends or corners or otherwise affect road safety, such as the conversion of existing premises for use as petrol filling stations or transport cafés, or

(b) involves the erection of buildings on land required for highway purposes.

Art. 10 (*reference of applications to the Minister*). While the Minister is prepared to allow a reasonable time, according to the circumstances of the case, in which notice of a desire to be heard may be given, the Ministry suggest that local planning authorities should indorse on the Notice served under Art. 10 on the applicant a statement that notice of desire for a hearing should, in normal cases, be given to the Minister within one month from the service of the Notice under Art. 10 (Circular No. 47, para. 15 (*d*).)

Art. 11 (*appeals*). The Ministry say that notice of appeal should in the first instance be given by letter, on receipt of which an appeal form will be sent to the applicant for completion (Explanatory Memorandum, p. 8).

The documents referred to in sub-paras. (i) and (ii) of para. (2) will be those submitted in accordance with the Town and Country Planning (Making of Applications) Regulations, 1948 (*ante*, p. 82).

Art. 12 (*register of applications*). The Ministry suggest that the appropriate part of the register should be kept at the council offices of the county district in which the land is situated. The Ministry also suggest that local planning authorities should make arrangements for sending official extracts from the register by post. There is no intention of issuing any model form of register but the Ministry suggest that local planning authorities should arrange the prescribed particulars in the same sequence in which they are set out in Art. 12.

Sched. Class I (*development within the curtilage of a dwelling-house*). As to garages, see *ante*, p. 221.

Classes IV (*temporary uses*) and V (*uses by members of recreational organisations*). These Classes deal, *inter alia*, with the problem of camping. By Class V, members of certain recreational organisations are permitted, without limit of time, to use land for purposes of recreation or instruction and to erect or place tents or caravans on the land. These organisations are:—

(a) British National Cadet Association.
(b) Boy Scouts Association.
(c) Boys Brigade.
(d) Girl Guides Association.
(e) Camping Club of Great Britain and Ireland.
(f) Salvation Army.
(g) National Council of Young Men's Christian Associations.
(h) Caravan Club of Great Britain and Ireland.

By Class IV, persons who are not members of one of the organisations referred to above will, in so far as any camping they undertake involves development within the meaning of s. 12, have the benefit of the 28 days permission specified in Class IV.

As to exemption from development charge, see the Development Charge Exemptions Regulations, 1948, Sched. Classes 8 and 9, *ante*, p. 239.

Class VII (*forestry buildings and works*). This Class should be read in conjunction with s. 12 (2) (*e*) of the Act under which the *use* of land and buildings for agriculture or forestry is deemed not to constitute development.

The dimensional limits imposed on buildings will permit the erection of a single section (18 feet by 15 feet) of a building incorporating the new MAF structural components (Explanatory Memorandum, p. 10).

Class VIII (*development for industrial purposes*). Para. (2) (tipping of waste) which should be read with s. 12 (3) (b) of the Act, authorises the continuance of existing tips legitimately in use on July 1, 1948, whether or not the superficial area or height of the deposit is thereby extended. Express planning permission will always be required for starting new tips.

Any local authority considering that it would be justifiable to limit the expansion of an existing tip may submit a Direction under Art. 4 (1) of the Order for the approval of the Minister under Art. 4 (2).

Class XIII (*development by local authorities*). As to refuse tips, see the note to Class VIII above.

Class XIX (*development by mineral undertakers*). The getting, dressing or treatment of minerals is an "industrial process" (Art. 2) and consequently mineral undertakers have the right to continue existing tips given by Class VIII. See the note thereto above.

Class XX (*development by the National Coal Board*). As to refuse tips, see the note to Class VIII above.

Ministry of Town and Country Planning Circulars and Memoranda

[continued from pp. 369, 416, *ante*]

Explanatory Memorandum, Part II—Notes on Sections. This Memorandum provides a detailed commentary on the Town and Country Planning Act, 1947, dealing with the Act section by section [2s. 0d.].

War Works and Planning

A re-consideration of the Building Restrictions (War-Time Contraventions) Act, 1946, in the light of the Town and Country Planning Act, 1947

By T. BEAUMONT, M.A., L.A.M.T.P.I.,
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1. *The* 1946 *Act*

The Building Restrictions (War-Time Contraventions) Act, 1946, was followed so closely by the Town and Country Planning Act, 1947, and was in any case so hard to understand without careful study that it is in danger of being overlooked. It is important that planning authorities, at any rate, should not overlook it, because unless some action is taken before March 26, 1951, works carried out or uses of land begun during the war period which remain after that date may be treated as complying both with " building laws " and " planning control ". These expressions are defined in the 1946 Act, and it is not proposed to set out the definitions here : the " war period " means the period between September 3, 1939, and March 25, 1946.

So far as it affects " planning control " the 1946 Act at first sight appears to apply mainly to works carried out or uses begun by or on behalf of the Crown, *i.e.*, to such things as gun-sites and attendant buildings, pill-boxes, camps, radar stations, aerodromes and so on. S. 4, however, which limits the time within which steps may be taken to enforce control to a period of five years from March 26, 1946, applies to " any works on land carried out, or use of land begun during the war period " which remain or continue after the expiration of the five-year period. So, too, do s. 2, which enables anybody interested in land to apply for a determination as to whether works carried out or uses begun during the war period comply, and s. 3, which prescribes how action to enforce control is to be initiated (for example) by the local planning authority. The general scope of the Act, therefore, extends to cover any non-complying works or uses begun during the war period.

With regard to government works and uses, s. 7 (6) is an important safeguard which prevents the period of five years from starting to run while enforcement is prevented by reason of any Crown interest in the land. S. 4 (2) enabled a notice to be served by the appropriate local authority before the expiry of the five-year period directing that the five-year limitation should not apply (so far as concerned planning control) in certain cases : but this sub-section is repealed from July 1, 1948.

2. *The* 1947 *Act*

How is the position affected by the 1947 Act? S. 75 of this Act enables control to be enforced in ordinary cases over any works carried out or uses begun before July 1, 1948, in contravention of previous planning control (whether or not they were carried out or begun before or after July 22, 1943) provided that action is taken before July 1, 1951 : this time limit may be extended in the case of works or uses begun during the war period as defined in the Building Restrictions (War-Time Contraventions) Act, 1946—*e.g.*, in cases where, by reason of Crown interest in the land, the five-year period under that Act did not start to run until after July 1, 1946. S. 75 of the 1947 Act is expressly prevented, however, from applying to cases where under the Building Restrictions Act works or uses are deemed to comply with planning control, *e.g.*, by virtue of a determination or of the expiry of the five-year period. It enables the Minister to make regulations amending the Building Restrictions Act in its application to restrictions contained in Acts (other than Planning Acts) repealed by the 1947 Act. It also provides safeguards to prevent landowners being out of pocket by reason of being obliged to remove government war works under an enforcement notice.

3. *Conclusions*

What are the practical implications of all this? They appear to be divisible into two main classes:—

(a) Practical implications for local authorities :—

  (i) That the date when any property developed during the war passes out of the hands of the Crown either permanently or on a long term tenancy (if later than March 25, 1946) is of vital importance. In this connection it is noted that the Minister of

Health, in the last paragraph of Circular 137/46 which was published in July 1946, hoped "with the co-operation of the other Government departments concerned, to reach an arrangement whereby responsible authorities are informed as soon as it is decided to dispose of a Crown building for a term which brings it within the Act". From the experience of the writer of this article it appears that the Minister's efforts in this direction have not been conspicuous for their success.

(ii) That enforcement action under the 1947 Act in respect of any war-time buildings or uses may well have to be begun before March 26, 1951. If no action is taken by this date they may be deemed to comply. It is important that it should be appreciated that this may be the operative date in so far as war-time buildings and uses are concerned and *NOT* July 1, 1951, as it will be in the case of non-complying works or uses begun before September 3, 1939, or after March 25, 1946.

(iii) That certain applications for permission to retain existing non-complying war-time works or uses, which under the old Planning Acts could not strictly have been entertained, might in fact be treated as applications under s. 2 of the Building Restrictions Act: and that such applications ought to be advertised within fourteen days of receipt (s. 2 (7)).

(b) Practical implications for landowners :—

(i) That after July 1, 1948, in addition to the right to apply under the 1947 Planning Act (s. 18 (1)) for permission to retain existing buildings or works, there will continue for some years to be a right to apply for a determination under s. 2 of the Building Restrictions Act in respect of works or uses begun between September 3, 1939, and March 25, 1946. There does not seem to be much advantage in acting under the 1946 Act, the main differences being that an appeal lies to the Minister of Health and not to the Minister of Town and Country Planning, that the local authority must advertise the application, that unsatisfied objectors may appeal and that it may well take longer for an applicant to get a final decision.

(ii) That war-time works or uses in respect of which there has been no determination under the 1946 Act or enforcement under the 1947 Act will be safe after March 25, 1951, provided Crown control ceased before March 26, 1946 : otherwise they will not be safe until five years after Crown control ceased.

Statutory Instruments

LIST

of Statutory Rules and Orders and Statutory Instruments made under the Town and Country Planning Act, 1947

S. R. & O., 1947

No. 2294 . Central Land Board Regulations, 1947, made under s. 2; came into operation on October 28, 1947.

No. 2499 . T. & C. P. (Authorisation of Delegation) Regulations, 1947, made under s. 34; came into operation on November 21, 1947.

SI 1948

No. 207 . Acquisition of Land (Claims for Adjustment of Compensation for War-Damaged Land) Regulations, 1948, made under Sched. VII, para. 1 (2); came into operation on February 11, 1948.

No. 213 . T. & C. P. Act, 1947 (Appointed Day) Order, 1948, made under s. 119; came into operation on July 1, 1948.

No. 711 . T. & C. P. (Making of Applications) Regulations, 1948, made under ss. 73 (1), 102 (1); came into operation on July 1, 1948.

No. 902 . Claims for Depreciation of Land Values Regulations, 1948 (*ante,* p. 82), made under ss. 60 (2), 64, 111; came into operation on July 1, 1948.

No. 954 . T. & C. P. (Use Classes) Order, 1948 (*ante,* p. 145), made under s. 12; came into operation on July 1, 1948.

No. 955 . T. & C. P. (Use Classes for Third Schedule Purposes) Order, 1948 (*ante,* p. 148), made under Sched. III, para. 6; came into operation on May 5, 1948.

No. 958 . T. & C. P. (General Development) Order, 1948 (*ante,* p. 149), made under ss. 13, 14, 16, 114; came into operation on July 1, 1948.

SI 1948	
No. 1126 .	T. & C. P. (Enforcement of Restriction of Ribbon Development Acts) Additional Regulations, 1948 (*ante,* p. 235), made under s. 76 (6); came into operation on July 1, 1948.
No. 1188 .	T. & C. P. (Development Charge Exemptions) Regulations, 1948 (*ante,* p. 236), made under s. 69 (2) (*b*); came into operation on July 1, 1948.
No. 1189 .	T. & C. P. (Development Charge) Regulations, 1948 (*ante,* p. 241), made under ss. 70 (2), (3), 111 [1]; came into operation on July 1, 1948.
No. 1213 .	T. & C. P. Acts, 1944 and 1947 (Registration of Orders and Lists of Buildings) Rules, 1948 (*ante,* p. 242), made under ss. 30, 39, and s. 15 of the Land Charges Act, 1925 [2]; came into operation on July 1, 1948.
No. 1236 .	T. & C. P. (Transfer of Property and Compensation to Officers) Regulations, 1948 (*ante,* p. 312), made under s. 101; came into operation on July 1, 1948.
No. 1309 .	T. & C. P. (Erection of Industrial Buildings) Regulations, 1948 (*ante,* p. 314), made under s. 14 (4); came into operation on July 1, 1948.
No. 1348 .	Stopping-Up of Highways (Concurrent Proceedings) Regulations, 1948 (*ante,* p. 314), made under s. 49 (5); came into operation on July 1, 1948.
No. 1380 .	T. & C. P. (General) Regulations, 1948 (*ante,* p. 315), made under ss. 9, 19, 20, 22, 24, 27, 30, 33, 45, 79, 84, 105, 110, 111, Sched. X, para. 13, and the Town and Country Planning Act, 1944, s. 23; came into operation on July 1, 1948.
No. 1436 .	T. & C. P. (Tree Preservation Order) Regulations, 1948 (*ante,* p. 322), made under ss. 28, 111; came into operation on July 1, 1948.
No. 1437 .	T. & C. P. Minerals Direction, No. 1, 1948 (*ante,* p. 325), made under SI 1948, No. 958, art. 5 (6); came into operation on July 1, 1948.
No. 1459 .	T. & C. P. Delegation (London) Regulations, 1948 (*ante,* p. 326), made under s. 114; came into operation on July 1, 1948.
No. 1460 .	T. & C. P. (City of London Applications) Direction, 1948 (*ante,* p. 327), made under s. 15; came into operation on July 1, 1948.
No. 1461 .	T. & C. P. (Local Authorities' Land: Exceptions to section 82) Regulations, 1948 (*ante,* p. 334), made under s. 82 (1) (*c*); came into operation on July 1, 1948.

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[1] Approved by Resolutions of both Houses of Parliament.

[2] See also the Local Land Charges Rules, 1948 (SI 1948, No. 1283) made under the Land Charges Act, 1925.

SI 1948	
No. 1520 .	T. & C. P. (Enforcement of Restriction of Ribbon Development Acts) Regulations, 1948 (*ante,* p. 328), made under s. 75 (8)[1]; came into operation on July 1, 1948.
No. 1521 .	T. & C. P. (Minerals) Regulations, 1948 (*ante,* p. 330), made under ss. 81 (1), 111[1]; came into operation on July 1, 1948.
No. 1522 .	T. & C. P. (Modification of Mines Act) Regulations, 1948 (*ante,* p. 332), made under s. 81 (4)[1]; came into operation on July 1, 1948.
No. 1613 .	T. & C. P. (Control of Advertisements) Regulations, 1948 (*ante,* p. 332), dated July 12, 1948, made under ss. 31, 32 (2), (3), 111; came into operation on August 1, 1948.
No. 1766 .	T. & C. P. (Building Preservation Order) Regulations, 1948 (*ante,* p. 414), made under s. 29; came into operation on August 16, 1948.
No. 1767 .	T. & C. P. (Development Plans) Regulations, 1948 (*ante,* p. 403), made under ss. 8, 10, 11, 111; came into operation on August 16, 1948.

Private Rights and Ministerial Action

By T. A. Blanco White, Barrister-at-Law

I. General Principles on which the Courts Intervene (*ante*, p. 32).
II. Objections to Planning (*ante*, p. 86).
III. Development of One's Own Land (*ante*, p. 173).
IV. Opposition to Compulsory Purchase (*ante*, p. 257).
V. **Disputes about Compensation.**

V. Disputes about Compensation

1. This article deals primarily with two questions: first, to what extent are the provisions as to compensation of the Town and Country Planning Act, 1947, legally enforceable at the suit of an aggrieved landowner; and secondly, how in the event of dispute is the amount of such compensation to be settled? Something will also be said in paras. 8 to 13, about the assessment of development charges.

Assessment of Compensation

2. The second of these questions is easily answered. Where there is a claim for compensation under the Act, and a special procedure is laid down for determining the amount of the claim, the procedure laid down is that of the Acquisition of Land (Assessment of Compensation) Act, 1919. In the few remaining cases where no procedure is specially laid down, the claim can be enforced by action in the Courts in the usual way.

3. The 1919 Act will no doubt be familiar to most readers of this Journal; it provides for arbitration of very similar character to an ordinary commercial arbitration, with the usual provisions for statement of a case to the High Court and so on. From the purely procedural point of view, this way of enforcing a claim is reasonably adequate.

4. It follows that once a claim to compensation is established, the amount of the claim is in all cases to be assessed by normal legal methods. In the case of any claim but a claim under Part VI of the 1947 Act, that disposes of the question: for the claim having been assessed, the money will

become payable. Under Part VI, dealing with claims for loss of development value, the position is, however, different. Claims having been formally assessed, the Treasury can then pay whom it likes what it likes, subject only to Parliamentary control—provided all payments add up to £300,000,000. The intentions of the Treasury must in due course be expressed in a scheme, which Parliament will have to approve, and if that scheme should take a form which definitely allots specified sums of money to specified landowners or classes of landowners, then either those sums will have to be paid or the scheme will have to be altered. At present, however, it cannot be said that a claim for loss of development value is in any sense enforceable: the Treasury has too much discretion for that.

5. There is one further minor exception to what has been said above. It arises under s. 20 (5) of the 1947 Act. Where planning permission is refused or revoked, or an existing use is ordered to be discontinued, the owner of the land may under s. 19 serve a purchase notice, calling upon his local authority to buy the land. The notice in due course goes to the Minister for action. The Minister can, if he likes, instead of confirming or rejecting the notice, give permission for some development other than that wanted by the landowner, leaving the landowner with a claim against the local planning authority for compensation for the difference in value between the land as he wants it developed and as the Minister wants it developed. The claim for compensation is assessed under the 1919 Act as usual. But—this is where our exception comes in—the Minister can if he likes direct that compensation be assessed without reference to any restrictions he may place on the number, size or shape of buildings to be erected on the land. Obviously some such provision was called for, or local planning authorities might have found themselves faced with most remarkable claims for compensation: indeed, they still might be. Giving such a broad discretion to the Minister destroys, however, much of the value for normal cases of this provision for compensation.

Purchase Notices

6. A few remarks on the subject of purchase notices generally may not be entirely out of place here. The Minister is required to confirm a purchase notice delivered by a landowner (or else to give an alternative planning permission, with the consequences discussed in the last paragraph) in any

case where he is "satisfied" that the land concerned, when subject to any restrictions imposed on development, is "incapable of reasonably beneficial use". This clearly gives the Minister a discretion in these cases, but it is a discretion of a rather different sort from most of those given by the 1947 Act. The matters on which the Minister is to satisfy himself are matters of fact, not of departmental policy. It follows that the Courts are competent to inquire (as in cases involving policy they are not) whether this discretion has been exercised upon a right or a wrong basis. If the basis upon which the discretion is exercised is altogether wrong, the exercise will be a nullity and the Minister must decide the question again. If for example it could be shown that no reasonable man could have thought the land capable of beneficial use, a decision by the Minister that it was so capable could be quashed. In practice, however, it will very seldom be possible to establish the facts sufficiently to upset one of these decisions.[1]

Rights to Compensation

7. The next question is: are the various rights to compensation given by the 1947 Act legally enforceable, or are they dependent on the Minister's discretion? We have already seen that compensation for loss of development value, and compensation arising out of service of a purchase notice under s. 19, are in a curious intermediate position where the right to compensation appears to be there but in fact the landowner may not get anything. Further, the right to compensation for loss caused by Tree and Building Preservation Orders under ss. 28 and 29 depends upon the terms of the Orders to be made by the local planning authorities as confirmed by the Minister. Apart from these cases, however, all rights to compensation given by the Act are definite rights, depending on facts and not discretions, and enforceable at law.[2] In

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[1] It may be noted, as a curiosity which may be of great practical importance, that the right to compensation mentioned in para. 5 will only arise if the offer of alternative planning permission is delayed until after the purchase notice is served: compare 19 (1) (*c*) and (2) (*b*). It is even arguable that an offer of alternative permission after service of the notice will displace the right to compensation. This, it may be noted, is essentially a point that can be taken to the Court for decision, as going to the root of the exercise of discretion.

[2] It may be noted that advertisement control under ss. 31 and 32 also depends upon Regulations; but here only the procedure for claiming compensation is left to the Regulations, not the right to it: a vital distinction from ss. 28 and 29; see the Town and Country Planning (Control of Advertisement) Regulations, 1948 (No. 1613), reg. 30.

contrast, for instance, to the rather nebulous rights to compensation associated with purchase notices, in the event of alternative developments being allowed in place of confirmation of the notice, there is a firm right to payment for the land if the notice is confirmed. In similar contrast to the vagueness of the whole purchase notice provisions, there is a firm right (under s. 20 (1)) to compensation for refusal of permission to carry out the specially favoured developments listed in Part II of Sched. III.

Development Charges

8. To most landowners contemplating development, development charges are at least as important as planning permission; the most important question is of course quantum. So far as the Act is concerned, the Central Land Board have a complete discretion in law as to the amount of charge to be imposed for any development which attracts charge at all, so long as there is no discrimination between applicant and applicant. They are, however, bound by the Development Charge Regulations (p. 241, *ante*). These limit the complete discretion of the Board by laying down a maximum that is fairly precise, and principles for keeping below the maximum in certain cases that are less precise or not precise at all—but all in terms of the Board's own opinion. If the Board fail to comply with the Regulations in any particular case, their determination should be held to be a nullity.[3] But the failure to comply with the Regulations could only be established, if either it was apparent on the face of the determination—a most unlikely event—or the determination was so unreasonable that the Court would infer that the wrong principles must have been applied. As a practical matter then the Regulations do not give much scope for judicial control of the Board's assessments.

9. As to discrimination, the Board may not give any "unreasonable or undue preference or advantage to one applicant over another" in assessing the charge for any particular development. Whether a preference or advantage is "undue" or "unreasonable", and what constitutes preference or advantage at all, are questions that the Courts

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[3] The normal method of dealing with the matter would presumably be by *certiorari*. It would not be satisfactory merely to ignore the determination of charge: for if the determination is null, there has been no determination; and by s. 74, there has to be a determination of charge before development can be started. Otherwise a penalty may be imposed: s. 74 (3). The Court can be asked to remit the penalty, but it would be better and safer to go to the Court in the first place.

can decide; no doubt they will have to, from time to time. Proving that the Board had contravened this requirement would, however, never be easy, even if the Board were so misguided as to do so. The most likely form of discrimination would be the selection of a form of payment for the charge that would suit one applicant's financial arrangements but not another's; and this could not contravene the ban on discrimination which goes only to quantum : s. 70 (2).

10. Where a proposed operation does not attract a development charge, the Board have no power to impose one. The making of decisions on this point is never left to the uncontrolled discretion of the Board; indeed the Board have no power to make a binding determination upon this question at all. The practice will no doubt be to ask the Board whether any particular operation attracts any and if so what charge; but if the Board reply that no liability to charge is involved this will be a mere expression of opinion. The question could, for instance, be reopened in abitration proceedings to assess the compulsory purchase value of the land. Except in certain special cases, mentioned below, no special procedure for deciding such questions is provided by the Act at all; anyone who wants them decided must get them before the Courts in the ordinary way.

11. The exceptional cases are important. The first relates to the exemptions given by s. 84 to operational land of statutory undertakers. Here the "appropriate Minister" is to decide whether land is operational land or not; his determination is not dependent on matters of policy and could presumably therefore be quashed on *certiorari* if unreasonable.[4] Similar questions under ss. 82, 83 and 85 as to charitable, ecclesiastical and local authorities' land are to be decided by the Minister of Town and Country Planning, and in the case of s. 85 (most exceptionally) an appeal by case stated to the High Court is provided on points of law (s. 92). In the more important cases, of local authorities' land (ss. 82 and 83), there is no such appeal, and the position is the same as under s. 84.

12. The remaining exception relates to "dead ripe land" under s. 80. Here there is no right to have land treated as "dead ripe" and so exempt from development charge, unless the Minister is "satisfied" that the conditions of s. 80 (1) are complied with. This section gives a discretion not

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[4] S. 119 (2). As to *certiorari* in such circumstances, see *e.g.*, *Board of Education* v. *Rice*, [1911] A. C. 179.

relating to matters of policy, such as was discussed in para. 6, and the same considerations apply.

13. Where there is a liability for development charge at all, the Board can be compelled to assess it, unless (s. 70 (1)) planning permission has in fact not been granted for the development concerned, or else the Board in their discretion feel that the development is too far ahead. Refusal on the first of these grounds could be challenged directly in the Courts, and such a challenge might be used to obtain a decision as to whether planning permission was needed at all[5]; it would be rare, however, for the Board to refuse in any doubtful case, for it can hardly matter enough to them to justify litigation. In relation to the second ground for refusal, the Board's discretion is very wide, and could hardly be challenged unless they were to explain exactly how long before the development occurred they would be willing to assess the charge and were then to deny unreasonably that it could be carried out within that period from the application. As before, refusal would be unlikely in a case that could give rise to litigation.

Summary

1. In general, the enforcement of rights to compensation and the assessment of amount of compensation are both matters for conventional legal process.

2. Exceptions to this rule occur in relation to compensation for loss of development value and in connection with purchase notices.

3. Liability for development charge is a matter to be determined by the Courts, or (in certain important exceptional cases) by Ministers—but with the possibility of partial judicial control.

4. Amount of development charge is left to the discretion of the Central Land Board, almost free from possible judicial control.

Conclusion

The effect of these articles may be summarised by saying, that the Minister can do very much what he likes provided the appropriate local authority pay for it. It may be thought that I have taken a very long time to say this; but after all, so did the Parliamentary Draftsmen.

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[5] See p. 176, *ante*, para. 7, as to this. Note, however, that in the great majority of cases where planning permission is unnecessary, there is equally no liability to development charge, so that the Board cannot be compelled to assess one.

Valuation and Management

By W. A. LEACH, F.R.I.C.S.

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V. Compensation for Acquisition of Land

(continued from p. 417, *ante*)

INJURIOUS AFFECTION TO LANDS HELD WITH LANDS ACQUIRED

16. *General rule.*—Any depreciation in the value of land retained by the claimant due to the planning of the acquired land may affect the claim for the injurious affection thereof.

The general rule as regards injurious affection is that all injury sustained or foreseeable, whether resulting from the acquisition, from the construction of the works, or from the subsequent user of the land acquired, provided the injury results from some act made lawful by the statutory powers, may be claimed as part of the compensation payable for the land acquired. Where the special Act authorises the acquisition of easements injurious affection may be claimed as on the acquisition of land.

17. *Appropriation of land to other purposes.*—Reference may here be made to para. 212 of the Final Report of the Uthwatt Committee on Compensation and Betterment (1942 Cmd. 6386) which pointed out that in assessing compensation for injurious affection by user, regard must be had to the use to which land acquired from an owner may possibly be put by the acquiring authority, the possibility of land acquired for one purpose being appropriated to some other purpose being a matter to be dealt with in the claim. The Committee recommended that the acquiring authority should have power to give undertakings restricting the future use of the land

acquired to specified purposes. No provision to this effect has yet been enacted and the matter rests on *Ayr Harbour Trustees* v. *Oswald* (1883), 8 App. Cas. 623, wherein it was held that an acquiring authority cannot contract that land acquired for one purpose cannot be appropriated to another.

18. *Development powers and scope of claim.*—It is also to be noted that under s. 20 of the 1944 Act land acquired or appropriated under the planning Acts may, with the appropriate consent, be developed for a variety of purposes, and under s. 22 authorisation is to be deemed to be granted for certain developments. These sections are incorporated with amendments in Sched. XI of the 1947 Act. Every possibility must, therefore, be envisaged and the claim based on the damage that may result to lands held with the land acquired, whether it be due to the future use of the land acquired or the noise and dust from a new or widened street thereon, the withdrawal of support, obstruction of light and air, interference with drainage, or other works authorised by or under the Act.

19. *Interference with easements, etc., where notice to treat served before July 1, 1948.*—S. 22 of the 1944 Act has been amended by the 1947 Act, the amendment to take effect as from July 1, 1948, but as originally enacted, the erection, construction, carrying out, or maintenance of buildings and works conforming with planning control on land acquired or appropriated by a local or highway authority acting under Part I of that Act, is authorised notwithstanding that it may involve interference with an easement or servitude (defined below) or breach of a restriction as to user imposed by contract. There is, however, a specific right to compensation for any such interference or breach of covenant, to be assessed in the same way as for a purchase by a local authority, *i.e.*, the 1919 Assessment of Compensation Act will apply as modified by s. 57 of the 1944 Act (1939 values). It should be noted that s. 57 of the 1944 Act is repealed as from August 6, 1947 (s. 50 and Part I of Sched. IX, 1947 Act), and where notice to treat is served after that date and before July 1, 1948, the assessment of compensation for injurious affection to land retained by the claimant will be based on prices immediately prior to January 7, 1947.

So far as these matters fall within the scope of a normal claim made in pursuance of a notice to treat they are to be included in that claim (s. 63 of the 1845 Act), but breach of a restrictive covenant as to user of land not owned by the claimant (but the claimant being entitled to the benefit of the restriction) would be a matter for a separate claim when the breach occurs and injury is suffered.

20. *Interference with easements, etc., where notice to treat served after July 1, 1948.*—The amendment made to s. 22 as now appearing in Sched. XI to the 1947 Act complicates rather than simplifies matters.

As from the appointed day (s. 113 of 1947 Act) the compensation for interference with a servitude or breach of covenant as to user is to be assessed in the *same manner* and subject to the *same rules* as in the case of a purchase under the Lands Clauses Consolidation Act, 1845, *i.e.*, the Rules of s. 2 of the 1919 Assessment of Compensation Act will not be applicable. It is possible that even the procedure of the 1919 Act may not be applicable, since this compensation is, by virtue of s. 119 (4) of the 1947 Act, compensation arising out of the compulsory purchase of land, this being specifically excluded from s. 110 of the 1947 Act. Note, however, that under s. 45 (7) (*a*) references to " the execution of the works " in para. 1 of Sched. II to the 1946 Acquisition Procedure Act are to be construed as including references to works carried out under s. 22 of the 1944 Act, and, as already observed, injurious affection, which would normally include injurious affection due to the authorised works, is by s. 119 (4) to be included in the compensation payable on the compulsory acquisition of land. On this reasoning injurious affection under s. 22 of the 1944 Act should be included in the claim for the land taken and dealt with as a whole under the 1919 Act. As to breach of restrictive covenant as to user see the second part of para. 19 *supra.*

It is also to be noted that s. 22 as amended is restricted to land acquired by local authorities and the Central Land Board under ss. 38, 40 and 43 of the 1947 Act and does not extend to purchases for more specific purposes under s. 37.

21. *Meaning of servitude.*—A servitude is defined as any easement, liberty, privilege, right, or advantage annexed to land and adversely affecting other land, including a natural right to support (1944 Act, s. 22 (5)). In the circumstances under consideration it would have to be annexed to the land retained by the owner and adversely affect that acquired by the authority. Presumably it need only be technically adverse, for a right of drainage might be such although of great benefit to land retained.

TEMPORARY RULE APPLICABLE TO PERIOD FROM JULY 1, 1948, TO JANUARY 1, 1954—VACANT POSSESSION VALUE

22. *Agricultural property excluded.*—Although Parliament was agreeable in broad principle to current value being paid for land acquired after the appointed day, it was not willing to go to the extent of paying the " scarcity values " which are currently being asked for certain types of property, notably houses with vacant possession. This situation is dealt with in s. 52 from which, however, agricultural property is excluded.

Agricultural property here means agricultural land or buildings as defined in the Rating and Valuation (Apportionment) Act, 1928, and also a house used as a dwelling by a person primarily engaged in carrying on or directing agricultural operations on land in the neighbourhood of the house.

23. *General rule.*—Where a notice to treat is served before January 1, 1954, and the interest being acquired (not being an interest in agricultural property) carries the right to vacant possession before that date, the interest is to be deemed to be subject to a lease commencing on the date of service of the notice to treat (or the date when the owner of the interest would become entitled to vacant possession), and expiring on January 1, 1954, or the date of expiry of the interest being acquired whichever is the earlier.

It will be observed that this provision is not restricted to properties with scarcity value. It is to be applied in every case where vacant possession can be granted (excluding agricultural property), but as will be shown later the assumed lease may sometimes be ignored in practice.

24. *Terms of hypothetical lease.*—The tenant under the hypothetical lease is to be assumed to be liable for all usual tenant's rates and taxes and to bear the cost of repairs, insurances, and other expenses, if any, necessary to maintain the land in the state in which it was on the date of the notice to treat. The rent is to be assumed to be 5 per cent. on the capital value of the premises, or the sum which a tenant in occupation might reasonably be expected to pay under a lease for a term and subject to the conditions specified, whichever is the less.

Where land is in fact let the rent to be taken into account for the period of the letting is the actual rent. If, therefore, premises have been let before service of notice to treat at a rent in excess of 5 per cent. on capital value, the claimant will, in the estimation of compensation of acquisition, secure the benefit thereof for the term of the lease unless the acquiring authority can satisfy the arbitrator that the letting was effected in anticipation of the acquisition and with a view to increasing the compensation payable (1946 Authorisation Procedure Act, Sched. II, para. 8).

25. *Capital value.*—Capital value means the value of the freehold interest (free from incumbrances but subject to any easement or restriction affecting the land at the date of the notice to treat) as calculated for compulsory acquisition under the 1919 Assessment of Compensation Act, *i.e.*, market value at date of service of notice to treat, and this may include scarcity value.

26. *Rent Act tenancies.*—An interest is not to be deemed to carry the right to vacant possession if the premises fall within the scope of the Rent and Mortgage Interest (Restrictions) Acts, or any Act amending or extending these Acts, and they are let to a contractual tenant or are subject to a statutory tenancy.

It is permissible under the Rent Restrictions Acts for a contractual tenant to assign his tenancy in return for a monetary payment, and this payment takes into account that the assignee will become a statutory tenant when the contract expires, with all the protection enjoyed by a statutory tenant. Even quarterly tenancies change hands at substantial sums and the claiming of similar sums under the Act would appear to be legitimate. As, however, an authority cannot displace residential occupiers until other accommodation is available (Housing Act, 1936, s. 37, and s. 26 (7) of 1947 Act) they will normally be able to await the expiry of the contractual tenancy or be able to give notice to quit. They will then have to deal only with a statutory tenant, *i.e.*, with a non-assignable interest.

27. *Requisitioned land.*—Requisitioning is for this purpose to be ignored, and the land regarded as not subject thereto (s. 54 (1)). The right to possession will, therefore, depend on contractual rights.

28. *Rule not applicable to disturbance, etc.*—S. 52 affects only the compensation payable for the land being acquired and does not affect compensation for disturbance (s. 52 (6)).

29. *Application of rule.*—The application of this section offers no little scope for divergencies of opinion. Take, for example, the case of a freehold house in owner-occupation

which would in 1939 have sold for £900. Since the owner is entitled to sell with vacant possession the proposition falls within s. 52. To-day such a house, free from incumbrances, might be sold for, say, £2,500 and the statutory rent at 5 per cent. thereon would be £125 per annum. It will be noted that whilst 5 per cent. on the capital value is a maximum, the tenant is only assumed to be liable for usual tenant's rates and taxes, so that, in Newcastle-upon-Tyne and elsewhere where there are owners' rates, the owner is at a disadvantage. These rates and, in all cases, any outgoings such as tithe annuities or land tax for which the hypothetical tenant is not liable, must of course be deducted in the process of valuation although these liabilities will already have depreciated the capital value.

Would a tenant for a term expiring on January 1, 1954, be prepared to pay £125 per annum? If the house has never been let and is, therefore, not subject to a standard rent, in present circumstances a tenant could in most districts probably readily be found at that rental, but if the Rent Acts are amended at some future date on the lines of the Morris Report, it might not be legal to charge so high a figure. It may, however, be equally doubted whether, if the housing shortage is tolerably modified in the near future, it will be possible to secure so high a rent in two or three years' time.

If an owner-occupied or vacant house is subject to a standard rent the position would seem at first sight to be parallel with that which has arisen under s. 2 (1) (*a*) of the Compensation (Defence) Act, 1939; the tribunal under the Act has accepted the standard rent as evidence but not conclusive evidence of the rent which a tenant might have been prepared to pay. Possibly the tribunal had in mind the variations in the standard rent of exactly similar houses, and felt that if they were to be called upon to determine the rental of a number of such houses, they ought, in all reason, to assess them equally. Under the 1939 Act, however, the rental value in 1939 is the ceiling and all the tribunal has to do is to fix a fair 1939 rent, which, normally, would be somewhere near the standard rent. In other words, the standard rent (usually in requisitioned houses the actual 1939 rent) would in most cases be admissible as evidence of the probable rental value in 1939; but it is no evidence of rental value to-day, and if the standard rent were to be regarded as a guide to the rent which a tenant would pay under the hypothetical lease it would have been so easy to say so in s. 52 (5), which makes other references to the Rent Restriction Acts. Presumably, therefore, the standard rent is to be ignored. It is part of the 1939 value swept away by s. 50 (1).

30. If instead of a house one were considering, say, a factory, it may be contended that for so short a term no substantial offer would be forthcoming (unless the buildings were attractive to a very substantial concern) in view of the possible high cost of adaptation on ingoing, but probably one has to assume the existence of a tenant to whom the premises are suitable in their existing condition subject to the execution of repairs essential for any occupier.

31. Reverting to the house, what will be its value on January 1, 1954? Having been assumed to be let, and probably being within the limiting rateable value of the existing Rent Restriction Acts, it would hardly be consistent to assume that after the hypothetical lease has expired the house could then be sold with vacant possession unless one further assumes that the housing progress will be so very great that rent control will be lifted. Perhaps one is intended, until the position is foreseeable, to adopt the view that the date January 1, 1954, has been put in the Act as the date by which the Government estimates that scarcity values will be substantially finished and rent control at an end. If this is not so a house with a 1939 standard rent would have to be valued accordingly, but, as observed above, s. 50 (1) has swept away 1939 value. What, on that footing, would be the value of the house in 1954?

32. For purposes of illustration the 1939 value of £950 of a particular house may be divided into, say, land £150 and building £800. Building costs are at present more than 150 per cent. above the 1939 level and still rising, but assume that building costs will show a tendency to flatten out eventually at 75 per cent. above the 1939 level. Taking 125 per cent. increase as appropriate in 1954 this would mean that the building costing £800 in 1939 would cost, say, £1,800 in 1954 and to this the value of the land must be added.

The site value depends to a great extent on planning and upon the level of development charges fixed by the Central Land Board, but one can only assume that the land value in the example will be static, giving a total value of £1,950, or allowing for fifteen years' greater age since 1939, say, £1,800, or 90 per cent. above the total value in 1939.

The valuation thus becomes the following:—

Rent reserved to 1/1/54	
5 per cent. on £2,500	£125 p.a.
Value in 1954 £1,800	
5 per cent. on £1,800	90 p.a.
Temporary scarcity rental	£35 p.a.

The £90 p.a. may be capitalised at 5 per cent. single rate, and £35 p.a. at 5 per cent. and 2½ per cent. with tax on sinking fund at, say, 7s. 6d. in the £. This portion of the income is marginal and subject to fluctuation; it might therefore be more appropriate to value it at 6 per cent. and 2½ per cent.; the question is what would an investor give, including the hypothetical sitting tenant? The reversionary value is more problematic and deferred at 5½ per cent.

Basic Rent	£90	
Y.P. 6 years at 5 per cent.	5.08	
		£527
Excess Rent	£35	
Y.P. 6 years at 5 per cent. and 2½ per cent. and tax on sinking fund	3.3	
		116
Reversion to	£1,800	
Deferred 6 years at 5½ per cent.	.725	
		£1,305
		£1,948

(An alternative valuation would be £2,500 less the cost of buying in the hypothetical lease.)

33. A deduction from this figure may be necessary having regard to the state of repair of the premises and one can either assume that the hypothetical letting will be at a full rental by reason of essential repairs being carried out at once (the estimated cost thereof being deducted from the valuation), or at a modified rent in view of the disrepair, the cost of repairs being deferred until 1954. The tenant is, under the terms of the assumed lease, liable to maintain the premises in the same state so that no deterioration is to be allowed for. At the moment the market modification of rent in respect of disrepair may be so slight as to make the second calculation the more advantageous to the claimant.

This valuation has been put forward to show the numerous assumptions, which must be faced, all of which are open to disagreement. The cynical may say that the Act has been designed as a harvest for lawyers and surveyors, but probably a better view would be that it provides an opportunity for valuers on both sides to show their good sense by giving effect to the spirit of the Act and avoiding extremes of optimism or pessimism in looking at the future.

34. *Effect of rule on site values.*—As regards sites available for rebuilding the position is perhaps more straightforward. The value of the freehold subject to the lease would be the value of the freehold in possession less the cost of securing the surrender of the hypothetical lease, and a short term of years at 5 per cent. on the capital value would as a rule be of no great value to a lessee except as a nuisance to the freeholder. It is probably not the intention of the Act that valuers should endeavour to estimate the value of that nuisance for there will in fact be no payment for possession by the authority to the hypothetical tenant, and for practical purposes the lease can probably be ignored. If there is an actual short tenancy regard must, of course, be had thereto, but most temporary lettings of sites are either periodic or preserve the right of the owner to retake possession for purposes of development. The rent payable in these circumstances is not comparable with what might reasonably be required for a straight term of years without power of determination before January 1, 1954.

That will be the position in every case where the hypothetical leasehold interest has no general market value.

Here again it is to be remembered that in these matters requisitioned land is, by s. 54, to be regarded as free of requisitioning.

[*To be concluded*]

Contracts for Sale

Clause for insertion in a Contract for the Sale of a Single Private Dwelling-house[1]

By Harold Potter, LL.D., Barrister-at-Law

The property is sold as a single private dwelling-house [and outbuildings within the curtilage] [together with a garage coloured black on the annexed plan]. The premises have been so used for a considerable time and are not subject to any special restrictions, orders or notices under any Town Planning Act or Town and Country Planning Act and the purchaser shall be satisfied with [a statutory declaration to this effect made at his expense and] a declaration of the said use in the conveyance and shall not make any requisition or objection in respect of the said Acts or the validity or otherwise of the said use of the whole or any part of the property.

Mortgages

The following corrections require to be made in the Form of Mortgage of Freeholds printed at pp. 431–4, *ante*:

Cl. (3), line 7. *For* " County ", *read* " Country ".

Cl. (5) (*b*), line 14. *After* " (if any) ", *insert* " for the time being interested in the said premises ".

Cl. (5) (*f*), line 5. *After* " to have ", *insert* " been ".

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[1] Where there is a sale of a single private dwelling-house in a built-up area and not subject to any of the special provisions of the Act or of any of the orders made thereunder, a vendor is clearly justified in avoiding the tedious task of replying to inapplicable requisitions by a simple clause in the contract such as this.

Assignments of Development Value

Forms of Assignment

[See p. 435, *ante*]

Notice of Assignment [1]

The following points with regard to notices of assignment are understood to represent the present practice of the Central Land Board.

1. Notice of assignment must be given to the Central Land Board (or to a Regional Office of the Board) whether the assignment takes place before or after the claim (on Central Land Board Form S. 1) has been made.[2]

2. The Board will accept a notice signed by the assignee. It need not be signed by the assignor.

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[1] Subject to the provisions of the Treasury scheme to be made under s. 58 (called the Section 58 Scheme), the right to receive payment under the Section 58 Scheme vested in the person who, on July 1, 1948, was the owner of the interest in land in respect of which payment is to be made: Town and Country Planning Act, 1947, s. 64 (1); and the right to receive such payment or any part thereof is transmissible by assignment or by operation of law as personal property: s. 64 (2). Regulations may direct that such assignment shall be of no effect for the purposes of the Section 58 Scheme unless notice thereof has been given to the Central Land Board within the prescribed period: s. 64 (2), proviso.

Any assignment of the right to receive a payment under a Section 58 Scheme or any part of such payment is of no effect for the purposes of a Section 58 Scheme unless notice in writing of such assignment, containing such information as to enable the Board to identify the land and the interest therein to which the notice relates is transmitted to the Board within the period commencing on July 1, 1948, or the date on which such assignment takes effect, whichever is the later, and ending on December 31, 1952: Claims for Depreciation of Land Values Regulations, 1948 (No. 902), reg. 7.

The expression "claimant" means the person by whom a claim in respect of the said interest in land has been duly made or other the person to whom, to the knowledge of the Board, the right to receive a payment under a Section 58 Scheme in respect of the same interest in land has been transmitted by assignment or by operation of law or, in a case where any such person as aforesaid is unable to act, the person who, to the knowledge of the Board, is duly authorised to act on his behalf: Claims for Depreciation of Land Values Regulations, 1948, reg. 2 (ix).

[2] Notice of assignment is, of course, necessary whether the assignment is contained in a separate document or is incorporated in a conveyance or other disposition.

3. After the notice of assignment has been properly given, the Board will permit the assignee to make and prosecute the S. 1 claim.

4. The S. 1 claim must normally relate to the facts as at July 1, 1948. Thus, although the assignee should give his own name and address as claimant under Item 1 of the form (explaining his position as assignee under "Business or Description"), the remainder of the form is to be completed with reference to the facts applicable to the person who was the owner on July 1, 1948.

Stamp Duty on Assignments

The following letter from the Controller of Stamps was received by Mr. J. Campbell Carter, Solicitor, in reply to a question as to the liability of an assignment for stamp duty:

Sir,

With reference to your letter dated August 25, 1948, I have to inform you that an assignment of the benefit of a claim under the Town and Country Planning Act, 1947, made for a monetary consideration would be liable to *ad valorem* "Conveyance on Sale" duty. If land, and the benefit of a claim relating to that land, are conveyed and assigned in the same deed for one consideration, the deed is liable to *ad valorem* "Conveyance on Sale" duty on that consideration.

If the benefit of the claim is assigned by a separate deed contemporaneous with the conveyance of the land, the assignment is liable to *ad valorem* "Conveyance on Sale" duty on the consideration attributable to the claim, and the total consideration paid by the purchaser for the land and the right to the claim should in strictness be apportioned between the deeds as required by s. 58 (1) of the Stamp Act, 1891. If the value of the claim is negligible or problematic this Office would be prepared, in practice, to stamp a separate assignment of the claim with the fixed duty of 10s., provided the conveyance of the land bears *ad valorem* duty on the full consideration.

An appointment of the purchaser as attorney of the vendor to pursue the claim, if included in the same deed as the assignment, would be considered ancillary to its main purpose and would not attract additional duty.

If an assignment of the benefit of the claim is not contemporaneous with the conveyance of the land to which it relates the duty chargeable will depend upon the circumstances.

I am, Sir,
Your obedient servant,
D. S. Kirtley,
for Controller of Stamps.

Vendor and Purchaser

In cases where a contract for the sale of land was made before July 1, 1948, completion to take place on or after that date, questions may arise as to who will be entitled in equity to the payment (if any) to be made under the Section 58 Scheme.

Under s. 64 (1) of the Act, the right to a Section 58 payment is to vest in the owner of the land on July 1, 1948, "subject to the provisions of any scheme". Under s. 58 (4) (*a*), the Section 58 Scheme may include provisions corresponding to certain provisions of the War Damage Act, 1943. Under s. 30 of that Act, where, at the time of the war damage, land was subject to a contract of sale, it is required that any sum due to be paid in respect of the war damage shall be held by the vendor in trust for the purchaser. It is understood that it may be taken that some provision corresponding to this will be embodied in the Section 58 scheme and that this will in fact secure that in the case of the comparable payments to be made under the Town and Country Planning Act, 1947, the interest of the purchaser in the payment, in a case where the purchase has been made at a price inclusive of development value, will be safeguarded.

Correspondence

To the MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Existing Use Value

Sir,

I read with interest your article "Existing Use Value—a Warning". In theory you are right: in practice, wide of the mark.

I know nothing of the sale mentioned in the *Estates Gazette* beyond the details you give; but without a doubt the auctioneer knew, as indeed many persons know, that the only effect of the Town and Country Planning Act on good, well-situate building land, or indeed, other land fit for development, is to increase the total cost to a private purchaser developer by 50–75 per cent. of the development charge. Prices are not as high as they were, but they are still, and will remain, substantially above existing use value because good land, fit for development, is scarce —and, indeed, must remain scarce for some considerable time under existing conditions.

The Minister cannot to any great degree alter the natural law of supply and demand by threat of compulsory purchase; indeed, the indirect effect of total planning control must, in practice, reduce the land available for development, and so increase the value.

M. J. H. HARRISON,
Solicitor.

Cambridge.

To the MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Sir,

On reading the article in this month's *Journal of Planning Law* the problem seems to be how, if existing use values are not to be exceeded, are a number of competitors for the acquisition of a particular property to compete with one another, particularly when none of them has any actual interest in the property for the purpose of continuing the existing use.

Probably in the Hove sale you mention few of the bidders would have had any interest in the sale at all if the allotment gardens were situate in a place where no development was likely to be permitted, and it seems absurd that bidders should compete on the basis of a hypothetical value for a use which none of them proposes continuing.

My conclusion is that what is being bid and paid for is the right to apply for planning consent, and having obtained it, to pay the development charge, develop the property, and thereafter possess and enjoy it. These are rights which still remain with an owner of land, and (excluding compulsory purchase) remain with him to the exclusion of all others. If there is competition to acquire and exercise such rights, they must acquire a monetary value dependent on the degree of competition.

Under the Act, as at present framed, it is hardly possible for the Central Land Board to put development charges up for auction. If they could, it might dispose of the problem.

M. S. JONES,
Solicitor.

Rye, Sussex.

Practical Points

6. *Authorised use.*

In cases where a local authority has registered a Resolution to prepare a Scheme, is it not necessary, in order to establish that the use of July 1, 1948, is the authorised use, to inquire back to the date of the Resolution? For instance, the Eastbourne Council passed such a Resolution in 1928 [L. P. & M.]

ANSWER

It is true that the actual use on July 1, 1948, may not be an authorised use within the provisions of the previous Planning Acts either by virtue of a Resolution or a Planning Scheme: s. 75 (9). Any unauthorised use may be the subject of an enforcement notice, subject to the provisions of s. 75. These restrictions on user, however, differ from those imposed since 1943, because Resolutions or Schemes were registrable as local land charges and could be discovered by searching the local land charges register. If the search does disclose the existence of any such Resolution or Scheme it is vital that further inquiry should be made to ensure that the actual user on July 1, 1948, was an authorised user. This is not something new to the present planning law, but it is as well to emphasise the point. [H. P.]

7. *Use classes.*

The Town and Country Planning (Use Classes) Order, 1948 (No. 954), made under s. 12 (2) (*f*) of the Act, declares that the uses specified in the Schedule to the Order are not development within the meaning of the Act. That being so, the specified uses cannot attract development charge and the Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948 (No. 955), which exempts the specified uses from development charge in virtue of s. 69 (2) of the Act, seems to be supererogatory? [D. S. C.]

ANSWER

It must be remembered that the Use Classes for Third Schedule Purposes Order (No. 955) is permanent (s. 111 (4) proviso) and changes of use within the Order will never be subject to development charge. The Use Classes Order (No. 954), on the other hand, may be amended or revoked and the changes set out therein may not always be excluded from being development within the meaning of the Act. [W. A. L.]

8. *Single plot owners.*

Will a purchaser from a single plot owner who was the owner before January 7, 1947, be entitled to take advantage of the concession in favour of single plot owners (*ante*, p. 393), provided, of course, the claim by the original owner is transferred to the new owner? [B. & B.]

Answer

It is considered extremely unlikely that the benefit of the concession will be available to the purchaser. [J. B.]

9. *Charitable trusts.*

Am I right in concluding that trustees of halls used as places of worship need take no steps to make any claim on the global fund or any other steps until they contemplate disposing of the premises, when they must take care before disposing of the property to secure permission for its development corresponding with the use which prevails generally in the case of contiguous or adjacent land, under s. 85. One gathers that if such a hall is situate in the midst of shop property the trustees could probably obtain a far better price than if the neighbourhood were zoned for residential purposes. But I suppose the important point is to obtain permission to develop, before a sale of the property takes place, and that while such properties remain held upon charitable trusts no question of a development charge arises. [W. R. L.]

Answer

The foregoing assumptions are correct and the following observations only dot the i's.

1. The "zoning" of the neighbourhood is immaterial; what matters is the actual use of contiguous and adjacent land.

2. If planning permission is refused for a use corresponding to that of the contiguous and adjacent land, there is no right

to claim compensation under s. 20, but the necessary conditions being fulfilled, there may be a right to serve a purchase notice under s. 19, when s. 85 (4) will apply if the purchase notice is confirmed.

3. The meaning of "reasonably beneficial use" in s. 19 is not defined, but since s. 19 (2) (*b*) provides as an alternative to confirmation of a purchase notice some other reasonably beneficial use, presumably this expression means something comparable in value with the use for which permission has been refused. This conclusion is, however, speculative.

4. Whatever the position in this respect may be, s. 85 (2) is absolute in terms: "No payment shall be made under Part VI of this Act in respect of any such interest as aforesaid", and the trustees are not left with an option to take advantage of s. 85 or to proceed as other owners. [W. A. L.]

10. *Development Charge.*

In or about 1922 the trustees of a Rugby Union club acquired some seven acres of land from a local landowner, fenced it and laid out two rugby football pitches, dressing-rooms, stand, etc. The price paid for the land was reasonable and in the conveyance the trustees covenanted only to use the land as an amateur sports ground. The conveyance, however, contained an agreement that any part of the land could be sold for building sites, with the permission of the vendor, and on payment to him of an additional stated sum per acre for the permission.

At first glance, the position after July 1, 1948, if the trustees thereafter wish to sell any of their land for building purposes, would be :—

(a) they would be liable for a development charge, and

(b) they would still be liable to the landowner for the additional payment under the conveyance.

But such a position would seem to conflict with the principles of the 1947 Act inasmuch as a private individual was still gaining financially by change of user and development. We are assuming, of course, that development permission was applied for and granted. Do you consider that both payments mentioned above as (a) and (b) would still be payable on future development and change of user and that the trustees of the club should make a claim for compensation? [N. N. & P.]

ANSWER

1. Section 85 would appear not to be applicable.

2. It is presumed that the fee simple in the land has been acquired by the trustees.

3. If a claim is made under Part VI the unrestricted value is the value for development as if the 1947 Act had not been passed. In this valuation allowance must be made for the premium payable to the vendor and the value reduced by reason of his consent being necessary (it is not stated that his consent cannot be unreasonably withheld and the allowance must be relevant to that which a purchaser would make for the business risk of a possible refusal). (Section 61 (2) (*b*) " value as it subsists ").

4. If development takes place the development charge will be the difference between the value of the land with development permission and the value without such permission (s. 70 (2)). These values are of the fee simple interest and presumably regard must be had to charges on the fee simple interest, so that the premium payable to the vendor would reduce the value with permission.

5. A precautionary claim should be made under Part VI as the proper interpretation of the Act is not abundantly clear.

6. As regards the last paragraph of the inquiry (a) would certainly be payable, and there is nothing in the Act to rule out (b). This strengthens the view expressed in 4 above. [W. A. L.]

11. *Planning contravention.*

For the past three years a caravan trailer has been kept in a front garden on a good class residential estate. But it is only recently that information to this effect has been given to the county district council concerned.

Before the appointed day the land was comprised within an operative planning scheme.

As I see it, the subject falls to be dealt with under s. 75 of the Town and Country Planning Act, 1947, as being existing development which contravenes previous planning control. Furthermore, action could also presumably be taken under the Public Health Code, since that code is not affected by planning legislation. [C. G. P.]

ANSWER

If the trailer caravan merely stands in the front garden in the intervals between use, and is not in fact used in that garden, I very much doubt whether it can be dealt with under s. 269 of the Public Health Act, 1936.

As regards the Town and Country Planning Act, 1947, leaving the caravan in the garden is not an operation, and if it is not used it is no more an irregular use of land than leaving a car standing in the drive. I do not, therefore, think that s. 75 applies to the case, but notice might perhaps be served under s. 33.

This section relates to the condition of land injurious to amenity, and it may be suggested that a trailer caravan standing on the land is not a matter of the condition of the land; but if rubbish were deposited in the garden that would undoubtedly be a matter of condition, and the deposit on the land of anything other than rubbish which is injurious to amenity is possibly also a matter of the condition of the land. In other words, condition is probably to be construed in relation to amenity so that anything in or on the land is a matter affecting its condition. [W. A. L.]

Summaries of Bulletins of Selected Appeal Decisions

Bulletin No. 1

The following is a summary of the Bulletin of Selected Appeal Decisions, No. 1, September, 1947, issued by the Ministry of Town and Country Planning :—

When a proposal to zone for industrial purposes an area containing some war-damaged houses is soundly conceived, that proposal must be allowed to prevail over the claims of the individual owners to be allowed to rebuild their houses, notwithstanding the hardship which would necessarily be inflicted upon them by the conversion of a cost-of-works payment to a value payment. (I/1.)

The reduction of excessive density is not a good ground for refusing permission to rebuild war-damaged houses when the nature of the surrounding property must necessarily for a long time prevent the adoption of a comprehensive plan for the reduction of density. (I/2.)

Where a factory was badly sited and its removal was necessary as soon as possible because of the injurious nature of its operations and the council's proposals for redeveloping the area, certain developments of the factory were nevertheless allowed for a period of ten years because of the importance of the factory's work in relation to the housing programme. (I/3.)

Where it is in the public interest that a factory should be rebuilt, a limitation of the permission to rebuild to a period of thirty years (which would have inflicted financial hardship on the appellants) should not be imposed by reason simply of redevelopment proposals concerning the nature and time of execution of which there is some doubt. (I/4.)

The permanent establishment of a large industrial undertaking in a sea-front residential area is undesirable. An expanding business should properly be situated in an area reserved for industry. (I/5.)

The intrusion of a heavy industry into a residential area is contrary to the interests of the community. (I/6.)

The necessity of a building for purposes of food production overrides the consideration that it will be of an elevation unsuitable for a residential zone, where there is no alternative site. (I/7.)

A house in an area zoned for single-family dwelling-houses which is too large for occupation by a single family should be used for multi-family occupation or as a hostel rather than for office use. (I/8.)

Housing estate and green belt. (I/9.)

Although the extension of development in a proposed green belt of a factory carrying on an offensive trade is undesirable, it may be permitted for a limited period when the development is intended to improve conditions for the staff, where the work is of national importance and where there is no designated area to which the business could be removed. (I/10.)

Amusement arcades constitute a special class of places of assembly in that they frequently cause congestion on roadways, and it is reasonable to set aside a special area for their development. (I/11.)

When application for permission for a particular development is made after the development in question has been carried out the Minister has no jurisdiction to determine an appeal against refusal of permission. (I/12.)

Permission to erect a workshop, garage and office in the centre of a town for the use of a wholesale meat distributor was given on a temporary basis in view of the facts that (a) redevelopment of this part of the town was not imminent; (b) the only alternative site was equally unsuitable; (c) the appellants' business was of an essential character. (I/13.)

Although the erection of dwelling-houses for farm workers in rural areas is often necessary, it does not follow that individual houses even for farm workers can, without detriment, be erected within such areas without consideration of their proper location. (I/14.)

Permission to erect a pair of semi-detached cottages for farm labourers on a farm was refused on the grounds that they would aggravate the existing nuisance caused by absence of a sewer, would be an extension of ribbon development, and that there was suitable land within the proposed development area at a convenient distance from the farm. (I/15.)

The establishment of a dairy business within the curtilage of a private dwelling-house in a residential road is undesirable in itself, likely to be a source of annoyance to neighbouring residents and bound to lead to further similar developments. (I/16.)

When a proposed development constitutes an industrial use which is inappropriate in a rural situation it should be located in a development zone where it would serve the needs of the surrounding countryside equally well without at the same time causing injury to rural amenities. (I/17.)

A town planning authority may attach conditions to its consent to a particular development, but it may not require an applicant to enter into agreements which would give the authority rights and remedies outside the Town and Country Planning Acts. (I/18.)

A limitation of the period of consent cannot properly be imposed in order to ensure that the building in question is maintained in a proper state of repair. (I/19.)

Bulletin No. 2

[See *ante*, p. 79.]

Bulletin No. 3

The following is a summary of the Bulletin of Selected Appeal Decisions, No. 3, April, 1948, issued by the Ministry of Town and Country Planning :—

An appeal against a time limit of fifteen years on permission to erect new buildings to replace war-damaged buildings in connection with a factory, was allowed on the ground that, although the area required redevelopment, there was no likelihood of such redevelopment being carried out at the end of fifteen years or indeed within a much longer period : (III/1).

An appeal was allowed against a refusal of permission to erect a pottery in the triangle formed by two main road intersections in an area provisionally zoned residential, on the following conditions : (a) the submission of revised plans including proposals for the use of that part of the site which was not required for the purposes of the pottery; (b) that no inter-connecting road between the two main roads should be constructed; (c) that no permanent spoil heap should be permitted on the site : (III/2).

An appeal against refusal of permission to make alterations to a foundry in a proposed residential zone was dismissed on the ground, inter alia, that an undertaking such as a foundry, if surrounded by residential property, must inevitably be a source of injury to amenities (III/3).

Permission to redevelop a site was refused on the ground that the greater part of the site was within an area proposed to be incorporated in a new road (III/4).

The Minister has no jurisdiction to determine an appeal where the use has been commenced before an application has been made to the Authority for planning permission (III/5).

An appeal by an Urban District Council against the refusal of the neighbouring Rural District Council of permission to develop some four acres of low-lying meadow land within the latter council's area for light industrial purposes was dismissed, on the ground, inter alia, that it would not be in the best interests of the town to provide a special area for the segregation of industry (III/6).

An appeal against refusal of permission to convert the ground floor of a detached dwelling-house in a mainly residential area into a non-residential club was dismissed on the grounds of injury to residential amenities and of the housing shortage (III/7).

An appeal was allowed against refusal to convert a four to five bedroom dwelling-house into two self-contained flats on the ground that in view of the housing shortage considerations of amenity were not adequate to support such a refusal (III/8).

An appeal was allowed against the Council's refusal of permission for the erection of houses forming part of a specially designed group on the sea coast (III/9).

An appeal against refusal of permission to re-erect beach huts was refused on the ground that these would interfere with public enjoyment of the beach (III/10).

An appeal was allowed against refusal of permission to convert parts of a derelict factory into a dwelling-house and cottage, the whole being in a landscape zone, on the ground that the residential development was slight and that the factory, being already there, would remain derelict if not redeveloped (III/11).

An appeal was allowed against refusal of permission to use land in a proposed rural zone for breeding greyhounds (III/12).

An appeal was dismissed against refusal of permission to work gravel in an area in the Outer Country Ring round London which was of great natural beauty and had been recommended by the National Parks Committee as appropriate for inclusion in a conservation area, on the ground that there was no overriding necessity which compelled the use of this particular site (III/13).

An appeal was allowed against a refusal of permission to convert two large houses, each standing in about four acres, for use as homes for elderly people, on the ground that the proposed use would not injure amenities (III/14).

The business of a firewood dealer involving the use of a circular saw is unsuitably located in a residential area but may be permitted where there is evidence that it serves a local need (III/15).

It is improper to grant consent for development subject to a number of conditions, one of which is that the applicant should pay a stipulated annual sum of money to the Council as security for the final fulfilment of the aforesaid conditions (III/16).

Existing Use Value and the Central Land Board

The Chairman of the Central Land Board, Sir Malcolm Trustram Eve, K.C., told a meeting of the Law Society at Brighton on September 22, 1948 about the steps which the Board have been authorised by the Minister of Town and Country Planning to take in view of the fact that in many cases land is deliberately being sold at its full value, including development value.

One of the objects of the Town and Country Planning Act, 1947, is that land should be sold at its value for the use to which it is being put at the time of sale. Then, when development takes place, and the developer pays a charge to the Board, he will not have paid for the development value twice over. In addition, the seller will have his claim on the £300,000,000 fund for loss of development value.

Sir Malcolm said he was afraid that the inflated prices being paid at the moment would be passed on to whoever occupied the building when the land was developed or alternatively, that purchasers would not come forward, and approved and urgent development would be held up. The Board had therefore asked the Minister for his approval in principle to the exercise of their powers under the Act to buy land by agreement. This would be done in cases where they were satisfied that it was deliberately being offered for sale or had been bought at a price considerably above existing use value, including cases where the transaction was coupled with an assignment to the purchaser of the vendor's claims on the £300,000,000. Owners would be informed that the Board did not wish to buy land if an undertaking were given that it would be sold at its existing use value. Where agreement was not arrived at, however, the Board could be authorised in appropriate circumstances to buy the land compulsorily.

They had hoped to be able to operate the Act without the threat or the use of land purchase, at any rate in the early days, but they had already plenty of evidence that many owners were selling land on terms unfair to prospective developers.

The following correspondence between the Chairman and the Minister has been issued for publication :

To the Minister of Town and Country Planning.

17th September, 1948.

My dear Minister,

The Central Land Board are disturbed about the fact that land is still being sold deliberately in very many cases at a sum equivalent to a price inclusive of development value. The Board accept as generally accurate the statement in a recent letter to the *Times* that "the professed object of the Act to secure that land shall be freely transferred at its existing use value is just not being achieved".

It is becoming increasingly common (to quote the same letter) for "the purchaser to pay what was thought to be a fair pre-Act price and to take an assignment of the vendor's right to claim compensation for depreciation arising as a result of the Act". If the pre-Act price of a plot were £200 and the existing use value is £50, the owner is selling at £200 and granting an assignment of his claim on the £300,000,000. The purchaser then becomes liable on development to pay to the Board a development charge of about £150. This makes the *immediate* price payable for the land a sum of £350, with a *later* right to be recouped whatever is payable out of the fund of £300,000,000.

There is a very real risk in transactions of this type that one of two things may happen. The inflated immediate price paid for the land will be added to the cost of the building and will be passed on to the person who is to occupy the building in a higher sale or letting price. Alternatively developers will refuse to buy the land at such a price, and approved and urgent development will not be carried out.

The Board, your Ministry and also you and I myself have used every possible chance to explain to the land-owning and land-buying public the importance of the establishment of existing use value. I am reminded of a story told of one of our Judges. He was being addressed by a young advocate accustomed to jury cases and repeated himself unduly. The Judge warned him once that he was not addressing a jury and then, rapping on his desk, said to the usher, "Usher, turn on the light over the jury box, Mr. —— doesn't believe me". The public doesn't seem to believe us and more light is essential.

The main sanction provided in the Act to establish existing use value on sales is the power given to certain public authorities to purchase the land. S. 43 gives to the Central Land Board, subject to your approval, certain powers to buy land by agreement and by compulsion. A sum of £100,000 has been allotted for this purpose in the Vote for the Central Land Board up to April, 1949.

As a first step (and in the earnest hope that further steps on a large scale will not be necessary) the Board have decided to ask your approval, in principle (within the limits of their present Vote), for the purchase by the Board under s. 43 (1) by agreement of land where the Board is satisfied that land is deliberately being offered for sale or has been bought at a price considerably above existing use value, including cases where this is coupled with an assignment to the purchaser of the vendor's claim on the £300,000,000. Your further approval would, of course, be sought on each individual case, when a full statement of the facts and circumstances would be sent to you. In appropriate cases the owner would be informed that the Board would not wish to purchase the land if an undertaking were given that his land would be sold at existing use value. Reference would also be made to the powers of the Board for compulsory purchase.

The Board had hoped to operate the Act without the threat or the use of land purchase—at any rate in the early days. But they are satisfied that many owners are as a matter of considered policy advertising and actually selling land on terms which will make the Act difficult or impossible to operate and which are not fair to prospective developers. They feel bound, therefore, to take this early action if you approve.

Yours Sincerely,

Malcolm Trustram Eve.

TO THE CHAIRMAN OF THE CENTRAL LAND BOARD.

21st September, 1948.

My dear Chairman,

Thank you for your letter of the 17th September.

It is, I absolutely agree, vital to the operation of the Town and Country Planning Act that land should be bought and sold at existing use value. I myself know of cases where approved development has already been hindered by the price asked for the land, although planning permission had been granted.

I am in entire agreement with the policy proposed in your letter, and I hope that the Board will exercise to the full extent necessary the powers conferred upon them by s. 43 of the Act. When the Bill was before Parliament it was expressly stated that these powers had been included for this very purpose.

I shall of course have to consider on its merits any particular proposal that the Board may submit to me for my approval under the section.

Yours Sincerely,

LEWIS SILKIN.

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"Planning Law" Notes

The spotlight remains upon the struggle between the Central Land Board and the owners of property as to the value at which undeveloped and partly developed land is to change hands. Last month, Sir Malcolm Eve, K.C., the Chairman of the Central Land Board, with genuine reluctance felt himself compelled to give the big stick of compulsory purchase a minatory flourish. The correspondence between Sir Malcolm and Mr. Silkin published on pp. 507, 508, raises grave legal issues which are examined in the article printed on p. 516, *post*, and the letters published on pp. 564–566, *post*, reflect varying reactions to this important move. We hope in a later number to deal with some of the practical difficulties involved.

More recently, Sir Malcolm has stated in some detail his views on how the Act should be made to work (concluding with another warning waggle of the club) and these are printed in full at p. 522, *post*.

When the Central Land Board announced the extension of the concession in favour of single plot owners to those who purchased or contracted to purchase at any time before July 1, 1948 (*post*, p. 561), even the most reliable of the daily papers carried headlines which led to the widespread belief that the time for making S.1 claims on the £300 millions had been extended by eighteen months. This, of course, is not true. The time for making these claims remains unchanged and the last day for ordinary claims remains March 31, 1949.

It is desirable to emphasise that it is essential for all persons who wish to take advantage of the concession in favour of single plot owners to make an S.1 claim at the earliest possible moment. They will lose the benefit of the concession unless they claim in time. For the " drill " see p. 542, *post*.

Owners of land which can qualify as "dead ripe" under s. 80, are advised by the Central Land Board to file an S.1 claim with an intimation that a claim for a "dead ripe" certificate (on Form L.R.D.1) has been made to the Minister. If the certificate is granted the S.1 claim can be abandoned. If it is not granted the S.1 claim remains available (as to fees see *post*, p. 561).

Registered builders wishing to take advantage of the "near ripe" scheme must also file an S.1 claim; see *ante*, p. 396.

Charity and ecclesiastical trustees should file an S. 1 claim in respect of non-functional land even if they contemplate an application to have it declared functional: see *post*, p. 541.

Mr. Desmond Heap draws attention (*post*, pp. 535–538) to a hole in the Act through which is pouring an exulting flood of contravening uses.

A Conveyancer's Ode

TO THE TOWN AND COUNTRY PLANNING ACT, 1947 [1]

To check sundry abuses
We don't quite recall,
The Statute of Uses
Was passed—but for all
The care of the draftsman in drafting that Act,
It's as dead as the dodo and that is a fact.

Now for uses that shift and for uses that spring
We have "uses existing"—a much better thing,
So cheer up, my colleagues, don't take it amiss,
They pottered [2] through that one; we'll Potter [3] through this.

J. F. T.

---

[1] Reproduced from "Law Notes" of October, 1948, by kind permission of the Author and Publishers.

[2] By adding three words to a conveyance.

[3] It is conceived that readers of this Journal will experience no insuperable difficulty in comprehending this allusion.

Existing Use Value and the Central Land Board

The Legal Issue Involved

By E. J. Rimmer and J. Stuart Daniel, Barristers-at-Law

1. In the previous issue of this *Journal* (p. 506) there appeared a report of Sir Malcolm Trustram Eve's address to a meeting of the Law Society at Brighton on September 22, 1948. Correspondence which had passed between Sir Malcolm and Mr. Silkin was published together with the report. The address and the correspondence were concerned with the fact that land was still changing hands at above existing use value and the steps which the Central Land Board proposed to take in this connection.

2. Briefly the position is this. The Central Land Board have now had to face the fact that in spite of their powers to determine development charges there is no indication as yet that land will be freely and readily bought and sold at existing use value. What the Board have accepted as the " professed object of the Act " is thus not being achieved and the transactions which have continued to take place, when land is sold at a price in excess of its existing use value, present, in the eyes of the Board, a double danger. The Board say: *First*, " the inflated immediate price paid for the land will be added to the cost of the building and will be passed on to the person who is to occupy the building ". *Second*, that " developers will refuse to buy land at such a price, and approved and urgent development will not be carried out ".

3. To meet these dangers the Board propose, in cases where land has been offered for sale or bought at a price considerably above existing use value, to attempt an agreed purchase and if that cannot be achieved to seek authorisation for compulsory acquisition. The price paid by the Board in either type of purchase would of course be limited to existing use value. This action will moreover be taken, the Board say, even in cases where the transaction includes an assignment to the purchaser of the vendor's claim on the £300 million.

The purchase by the Board of land required for immediate development from a vendor who was unwilling to sell at existing use value was clearly forecast by the terms of s. 43 of the Act. But the early stage at which the Board have decided to exercise their powers and the scope of the measures they propose to adopt must cause some surprise to students of the Act. If the Board in fact seek to carry out to the full the policy which Sir Malcolm has indicated, the position will require careful consideration both from the legal and the practical aspect.

4. The main functions of the Central Land Board are to determine and collect development charges and to assess development value for the purposes of claims on the £300 million. With the latter function we are not here concerned. By para. 1 of the Schedule to the Development Charge Regulations (No. 1189, p. 241, *ante*) it is laid down that the Governing Principle by which the Board is to be guided is that their determination of the charge shall " secure, so far as is practicable, that land can be freely and readily bought and sold or otherwise disposed of in the open market at a price neither greater nor less than its value for its existing use ". It would appear from what Sir Malcolm has said that the Board now regard it as part of their function not only to assess development charge with this object in view, but also to exercise what have hitherto been regarded as their incidental powers of acquisition. It had been expected that the Board would exercise its powers under s. 43 of the Act solely to secure desirable development in cases where this was thwarted by the refusal of a vendor to sell at existing use value (the second of the dangers mentioned by Sir Malcolm); but now, it seems, the Board intend to seek authorisation to purchase even where land has been sold to a developer and there is every prospect of the development taking place. In these cases the Board claim as their justification the danger of rising prices. This may be a genuine danger but the question is whether the Board are within their charter in dealing with it in this way.

5. The powers of the Board to purchase are derived from s. 43 of the Act.

By s. 43 (1):

> " The Central Land Board may, with the approval of the Minister, by agreement acquire land for any purpose connected with the performance of their functions under the following provisions of this Act, and in particular may so acquire any land for the purpose of disposing of

> it for development for which permission has been granted under Part III of this Act on terms inclusive of any development charge payable under those provisions in respect of that development ".

By sub-s. (2), if the Board cannot acquire by agreement on reasonable terms, the Minister may authorise them to acquire compulsorily if he is " satisfied that it is expedient in the public interest that the Board should acquire any land for any such purpose as aforesaid ".

The compulsory powers are therefore limited to the purposes for which purchase may be made by agreement with the further limitation of expediency in the public interest. What exactly are these purposes? "*Any purpose connected with the performance of their functions under the following provisions of this Act*" is the general answer. The functions are those conferred in Parts VI and VII, and consist, as we have already mentioned, of dealing with claims on the £300 million and determining and collecting development charge. If, for example, the performance of these functions requires offices or land the Board may buy them: but nowhere in Parts VI or VII are the Board assigned the function of securing the exchange of land at existing use value. Though this may be their governing principle in determining development charge, their *function* is to determine the charge, and the principle would appear to be ancillary to, and incapable of transcending or extending the function.

6. But there is a further particularised power. The Board may acquire land " *for the purpose of disposing of it for development for which permission has been granted under Part III of this Act on terms inclusive of any development charge. . .* ". The avowed intention of this power was to force a sale from the unwilling vendor who was holding up approved and desirable development.

When the Bill was being considered in Committee (see House of Commons Official Reports, March 18, 1947) the extent of the Board's powers to purchase was specifically raised. In the course of the debate, Mr. Silkin made the following statements:

> " I take it that the object of this amendment is really to ascertain why it is necessary for the Central Land Board to have conferrred upon it powers of acquisition of land other than for these purely domestic purposes [the acquisition of offices, etc.]. The main reason is that it

> may be necessary, in order to secure development, for the land to be acquired, either by agreement or compulsorily. . . ".
>
> "In some cases it may actually be necessary or desirable that the Central Land Board should acquire land compulsorily for the purpose of securing development".
>
> "It is not proposed that this power should be exercised on any wide scale. *It will be a residuary power which will be exercised only when development cannot be secured by normal means, either by a private developer himself acquiring the land and negotiating for a development charge or by a local authority carrying out the development.*
>
> But in a residuary case this is a power which is worth having; I think it is desirable, and since it can only be used with the approval of the Minister, there is no danger that the Central Land Board will embark on large-scale purchases of land merely for the sake of exercising those powers".

In answer to suggestions that the wording of the clause did not make the limitations of the powers clear. Mr. Silkin said:

> "I think that the words are perfectly clear. Sub-s. (1) limits the purpose for which the Central Land Board may, with the approval of the Minister, acquire land by agreement. It is:
>
> > 'for any purpose connected with the performance of the functions under the following provisions of this Act'.
>
> "We must look at the following provisions to see what are their functions. . . . Their functions are to pay out compensation in accordance with agreement and to collect a development charge where development takes place. *It is for those purposes and for those purposes only that they can acquire land.* . . . If the Central Land Board endeavoured to go outside those functions they could be restrained from doing so apart from the fact that the Minister himself must give approval. . . ".

It is, to say the least, surprising that after the assurances quoted above the Minister should express agreement with the Board's proposed policy. It may, however, be significant that in his reply to Sir Malcolm, Mr. Silkin only mentioned specifically cases in which development was being hindered. He was also careful to point out that each case would have to be considered on its merits.

So much for what has been said by the Minister. We propose now to consider the legal effect of the power as it stands, quite apart from what may have been said about it elsewhere.

7. Let us assume a case most favourable to the Board : a sale has been made at a price greatly above existing use value; permission has been given under Part III for some development which could easily be carried out by another developer, (the second assumption is made for the reason that there would clearly be no point in buying to resell to the same person—this would achieve nothing). What then is the position?

It is submitted that there are at least two considerations which make it doubtful whether the Board have power to acquire compulsorily in such a case:

(1) They may buy land for the purpose of " disposing of it for development ". But in such a case development is already assured, and since *ex hypothesi* it is permitted development, the nature of the development is unassailable. Nothing is said in the section as to prevention of inflated prices after development. The " disposal for development " is itself the statutory purpose and this seems in such a case to be exhausted *in limine*. If this is so expediency in the public interest cannot be prayed in aid since the Minister's satisfaction can only be accorded to purchases within the statutory purpose.

(2) But even if it were held that the intention to " dispose for development " justified the Board, though development was already assured, could the Minister in such a case be satisfied as to expediency in the public interest? The satisfaction of Ministers is difficult to disturb. But each case, as Mr. Silkin stated in his reply to Sir Malcolm, would have to be considered on its merits. And though the general danger may be apparent it is difficult to see how in any particular case the Minister could possibly be satisfied, at the stage when the compulsory purchase order came before him, that it was a matter of expediency in the public interest. He would not even know at what price the building was eventually to be sold. Nor, if he did, could he have any certainty that the particular price in the particular case was contrary to public interest.

It is submitted that the wording of the section is clearly not aimed at the authorisation of compulsory purchase in a case such as that assumed.

8. In many cases the circumstances may of course be less favourable to the Board than those considered above. No doubt Sir Malcolm's latest warning was not intended to be couched in terms of legal precision, for there would appear to be cases which fall within the terms of his address, as reported, in which compulsory purchase could not possibly be authorised. It is a prerequisite of the particular power conferred by s. 43 (1) that permission shall have been given. A vendor, therefore, who offers land at above existing use value is safe unless and until some would-be purchaser has obtained permission and enlisted the aid of the Board. If the land is auctioned, as it was in the Hove case, it will be against the purchaser only that the Board can act, if at all: for the offer is not above existing use value until the bidding makes it so, and in any case it is unlikely that permission will have been obtained at that stage.

9. On the practical side there are many problems which we hope to consider in later articles. These, however, will emerge only if the Board are able to obtain authorisation from the Minister, case by case, fully to carry out the policy they have outlined. The Minister may well feel difficulty in giving this authority. Whether he would be right to give it depends on the cogency of the arguments put forward in this article.

Development Charge and the Sale of Land

A Statement by Sir Malcolm Eve, K.C., Chairman of the Central Land Board

The following statement was made by Sir Malcolm Eve, K.C., the Chairman of the Central Land Board, at a meeting of the National Federation of Property Owners on October 14, 1948.

This new Act provides that development value, sometimes called building value, now belongs to the State and is, therefore, not any longer a saleable asset in the hands of landowners. But the land itself still belongs to its owner and can be and ought to be allowed to be freely bought and sold. This is a very new idea and rather naturally people (sellers, buyers and agents) have not yet got used to the new methods necessary to carry it out.

May I suggest some essential principles and also some suggested methods of sale.

Principles

First Principle.

Development value is now non-existent on a particular plot of land unless and until both a planning permission is given related to that plot and a development charge is paid. When that permission is given development value is created only for the particular permitted development.

For example, a plot of arable land, before the Act was passed, may have been worth £1,000 as a factory site. Since the Act it is, *before* planning permission, worth agricultural value only. If planning permission for houses only is given, the value rises at one moment of time (the payment of development charge) to housing value, but will never (in those circumstances) reach again its pre-Act factory value. Furthermore—and this is a vital point—the value does not any longer (as it used to before the Act) gradually creep up from agricultural to housing or factory value as the prospect of possible development becomes more probable.

SECOND PRINCIPLE.

Parliament has decided that loss of development value is not *of itself* compensatable, but that if no money were paid, hardships on a large scale would occur. Thus £300 million has been set aside for distribution to meet varying cases of hardship.

It is important to remember the words of the Act—the Treasury Scheme may provide for the ascertainment of the amount of the payments to be made *either* by reference to the development values *or* by reference to such other circumstances affecting the particular interests in land as may be prescribed by the Scheme *or* partly in one way and partly in the other.

Four things seem to flow from this :—

A. Not everyone is intended to receive 100 per cent. of their loss of development value. Indeed, this was made quite clear both in the White Paper and in Parliament.

B. The payment under the Scheme need not necessarily in all cases be measured in terms of loss of development value (*e.g.*, it might be related to out-of-pocket expenditure or some other relevant circumstance).

C. The payment will be made in relation to the circumstances of the person who was owner of the interest in the land on July 1, 1948, and *not* of those of any subsequent purchaser, lessee or mortgagee.

D. A buying and selling of a prospective payment under the Scheme ought to have nothing whatever to do with the buying or selling of a piece of land. Purchasers of these claims should realise that they are merely buying an unestablished claim and no more. The Scheme will have to decide later what should be paid to those who have sold their claims and no promise whatever has yet been made what will be paid. It is true that claims can in law be assigned (and this includes selling them). Clearly there will be cases where it is highly proper to assign (for example, in a family or in company reconstructions and in many other types of case). But I want to go on record as having given this advice early in the first year of this five-year period : " Do not buy a claim on the £300 million as part of a transaction in land ".

THIRD PRINCIPLE.

On any development occurring, a development charge is payable equivalent to the increased value of the property due to the permission given for that development. This charge is to be so fixed that land can be readily bought and sold at its value for its existing use.

People are finding it difficult to get accustomed to this idea of selling at existing use value. Some of them are taking the line that they won't play at all and have withdrawn their land from sale. Some take the line that they will ignore the intentions of the Act and only sell on the pre-Act basis, including development value. A few of these last-named refuse even to assign their claims on the £300 million, but the majority offer to sell their claims as part of the sale of their land, but the offer is only to price their claim at 100 per cent. I repeat my advice to purchasers : " You have been warned ". Others are rightly selling at existing use value and keeping their claims. And lastly some people are still (I am afraid) —mostly purchasers—ignorant of the provisions of the Act.

It is being said that existing use value is often very difficult to ascertain. " We have had no experience of it and the market hasn't yet fixed its basis ", is the sort of expression being used. What is—it is said—the existing use value of an uncompleted building estate or of a building plot ? How do I sell a plot at existing use value to a number of competing purchasers ? What is to happen at an auction ? These are, in my view, sound questions. I will try to help. (Incidentally I find that people are not finding the answer difficult when claiming on the £300 million.)

Development charge is only payable when development occurs and is only assessable by the Board a reasonable time before that development. We have no intention of allowing development charges to be paid and then hawked around for sale and resale. When land is to be sold *otherwise* than for reasonably immediate development, it should always change hands at existing use value only. Purchasers who in fact pay higher values must realise that when later we come to assess a development charge on the land or when possibly a notice to treat comes from a local or public authority, this higher price must be, and will be, ignored, and the charge or the compensation paid will be based upon the true existing use value. One of the many objects of the Act is to prevent speculation in building values.

Land in these circumstances (*i.e.*, no immediate development) should either be sold as an investment at existing use value or should be retained until building permission is about to be granted.

The Sale of Land

The immediate problem is how best to dispose of land on which building permission has been given or is immediately available. When a sale of such land is to take place a development charge in law can be paid either by the seller or by the buyer as the parties desire. The same applies to a lessor and building lessee or in Scotland to a superior and a feuar. There are, under the Act, two alternative methods open. If the purchaser, lessee or feuar—the developer—is to pay the development charge, then the land should always change hands at existing use value. This still seems to me the easiest and best course where existing use value is easy to ascertain and easy to bargain over (agricultural land without roads and services, the change of use of a house to a shop or nursing home). But if the seller, lessor (or superior in Scotland)—the present owner—wishes himself to pay the development charge, *he* should agree the charge with the Board, disclose the agreed figure to the developer and then sell at a price, inclusive of charge. But in this case, the present owner must make himself responsible both to the Board and to the developer for payment of the charge before the development starts. This method may have advantages in certain classes of case and *can* be used in *any* case where immediate development is permitted or about to be permitted. It enables an auction to be held with knowledge of the development charge. It enables competing purchasers to bid for the land in the known circumstances of an actual planning permission. It may be advantageous for development under building leases and for feuing in Scotland. It enables partly developed land (roads, sewers, etc.) to be sold at a price to include the value of the improvements made since July 1, 1948. (Those before that date must be claimed for on the £300 million.) It avoids the exact fixing of a price at existing use value by the parties for plots where such value is difficult to ascertain. Lastly, it enables transactions to continue broadly on past practice once the charge has been agreed. But this method must not put up the total selling price (including the charge).

If this latter method is to be used, what are the rules of practice to be? Our present rules are as follows:—

A. The Board will fix the charge to the best of their ability so as to secure that the balance of the price paid over and above the charge broadly represents existing use value. We hope to estimate correctly but we may under-estimate the possibilities. If so the vendor will be entitled to the best price he can, in fact, get *for that development on that plot*. But he should know (and others in the neighbourhood should know) that the price he gets will be known to us and he will not be surprised if for *the next transaction on another plot* our charge goes up. We should then have evidence that we had sold the development rights at too low a figure. We cannot allow this Act, and our administration of it, generally to increase the price of building land, and if prices do not generally correspond to existing use value, plus development charge, the result must be compulsory purchase either by a local authority or by the Board, who can then lease or sell at the correct level of prices. More on this later.

B. The alternatives of selling inclusive of charge cannot be permitted for second or subsequent sales *before* development starts. An owner, when he comes to us to have the development charge determined, should inform the Board whether he wishes to sell to a named purchaser, or by auction, or by public advertisement or in some named other way. The determination of the charge will be valid only for the agreed method and will be subject to review if any other method is adopted, and (*always*) if there is a sub-sale or lease to a third party before the development takes place. Planning consent in sufficient outline to assess the charge must always be produced either in the name of the seller or the buyer—either will do equally well.

C. The agreed charge will operate for a stated period only, never at present for more than twelve months. If this period becomes difficult it can always be altered. This is necessary to ensure that charges are fixed at current values. The period will run from the date the charge is agreed to the date the *first* development starts on the land. If that period runs out, the charge will be reviewed and may be varied up or down. The proposed developer should always be warned of this possibility and provision made for it in the contract.

No revision in the charge will be made, however, unless values have changed.

Summary of Suggestions

In summary, therefore, my suggestions come to this:—

If land is to be sold for reasonably immediate development the Board can offer to agree (subject to the rules I have mentioned) the development charge either with the seller or with the buyer. This gives a choice of selling the land inclusive or exclusive of development charge. But in neither case ought the transaction also to include a sale by assignment of the claim on the £300 million.

But if the land is being sold at a time when development is not reasonably immediate, the sale should always be at existing use value. But again, there should be no assignment of the claim.

This choice seems to me to give reasonable freedom to owners, to buyers and to agents. It applies equally to leases and to feuing in Scotland.

Properly operated by sellers, buyers and the Board it should not increase the price of land at all and should, in my view, enable land to be as freely disposed of as before the Act.

If the suggestions I have made are not adopted the alternatives, neither of which I wish for, are—

(a) for the Board to make each determination of development charge "subject to review after sale", or

(b) compulsory purchase by the Board.

Control of Land Use

By DESMOND HEAP, LL.M., L.M.T.P.I.,

Comptroller and Solicitor to the Corporation of the City of London

I. Planning Law and the Meaning of "Development" (*ante*, p. 7).

II. Planning Law and Development Permission (*ante*, p. 63).

III. Planning Restrictions and the Recovery of Compensation (*ante*, p. 124).

IV. Further Observations on the Meaning of "Development" and the Need for and Methods of Obtaining Planning Permission therefor (*ante*, p. 208).

V. Planning and the Designation, Development and Disposal of Land by Local Authorities (*ante*, p. 292).

VI. Advertisements and the Preservation of Trees, Special Buildings and Amenities (*ante*, pp. 376, 450).

VII. **Planning Control and its Enforcement.**

VII. Planning Control and its Enforcement

1. It is impossible to consider the method whereby a local planning authority can enforce the planning control which is given to it by the Town and Country Planning Act, 1947 (hereinafter referred to as "the Act") without again making reference to the interminable question of what constitutes *development* under the Act, because in dealing with the enforcement of planning control it is requisite to bear in mind at the very outset that it is only over development (as defined in the Act) that planning control can be exercised at all. In this connection it will be remembered that notwithstanding the extensive meaning of the word "development" as used in the Act there yet remain a number of operations and a number of changes of use which do not constitute development and which, accordingly, cannot be subjected to any form of planning control.

2. For a detailed discussion of the meaning of the word "development" as used in the Act, reference may be made to Articles I and IV appearing in this series under the general heading of "Control of Land Use" and set out *ante* at pages 7

and 208 respectively. For the purposes of the present article it will be sufficient to summarise this matter of the meaning of development in a few lines by stating as follows:—

(1) development falls into two categories involving either—
   (a) the carrying out of *operations* in, on, over or under land, or
   (b) the making of any *material change in the use* of land (s. 12 (2));

(2) the proviso to sub-s. (2) of s. 12 of the Act specifies three kinds of operation and three kinds of use which are excepted from the meaning of development with the result that neither planning control nor its enforcement can possibly arise in respect of any of them;

(3) sub-s. (3) of s. 12 specifies two kinds of use (relating respectively to—
   (a) the use of a single house as flats, and
   (b) the deposit of waste material,

   which are expressly declared, for the avoidance of doubt, to involve development;

(4) by sub-s. (4) of s. 12 the display of advertisements as therein mentioned is again expressly declared to involve development;

(5) sub-s. (5) of s. 12 specifies three kinds of change of use which whilst not being excepted from the meaning of development are nevertheless *not* required to have planning permission and, accordingly, in respect of which neither planning control nor its enforcement can arise.

3. So complex are the provisions of the Act dealing with the definition of development that anyone proposing to do anything affecting land may be forgiven for having doubts in some instances as to whether that which he proposes to do will, or will not, constitute development. The Act recognises that doubts of this kind may well arise and makes provision in s. 17 for resolving them by providing that such a person may (with or without the making of a formal application for planning permission) apply to a local planning authority to *determine the question* of whether that which he proposes to do does, or does not, constitute development within the meaning of the Act and (if it does) whether, in view of the various kinds of "permitted development" allowed by the Town and Country Planning (General Development) Order, 1948, he needs to get express planning permission in respect thereof (s. 17 (1)).

4. If the applicant is dissatisfied with the authority's determination of this question he can appeal, within one calendar month, to the Minister (s. 17 (2) and s. 16).

If the applicant is dissatisfied also with the decision of the Minister he may, if he is prepared to take a risk, proceed with his proposals (which the Minister has ruled constitute development) in which case he will probably bring into play the enforcement provisions of s. 23 (about which more will be said below) and have served upon him an enforcement notice (s. 23 (1)) against which he can appeal to a Court of summary jurisdiction (s. 23 (4)) before which tribunal he will be able to persist in the argument (on which he failed before the Minister) that that which he has done does not constitute development and is, therefore, not amenable to planning control or its enforcement. It is to be observed that in pursuing such an argument before the Court of summary jurisdiction, the Court is not in any way bound by the Minister's antecedent decision that that which the applicant sought to do *did* constitute development (s. 17 (2) proviso). This freedom to continue before the Court an argument which was unsuccessful before the Minister is important because it is fully anticipated that in any proceedings consequent upon the service of an enforcement notice under s. 23, one of the major issues will be whether that which has been done constitutes development and, in consequence, comes within the control of planning at all.

Turning now to s. 23 of the Act relating to the enforcement of planning control it is to be noted that a local planning authority can take action under the specific provisions of that section in two cases. These are as follows:—

(1) When development has taken place since July 1, 1948, without planning permission expressly granted under s. 14 of the Act or granted automatically by the Town and Country Planning (General Development) Order, 1948, in a case where the development constitutes permitted development under that Order; and

(2) when development has taken place since July 1, 1948, with planning permission but the conditions subject to which the permission was granted have not been complied with.[1]

In either of these two cases a local planning authority can take action within four [2] years of the development in question being carried out provided they consider it expedient to take action at all, and on this point they must have regard not only to the provisions of their development plan but also to any other material considerations. Action is commenced by the local planning authority serving an enforcement notice on the owner (as defined in s. 119 (1)) and occupier of the land in question (s. 23 (1)).

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[1] The provisions of s. 23 of the Act or applied to development carried out before July 1, 1948 by ss. 75 and 76 of the Act.

5. An enforcement notice must specify the development which it is alleged has been carried out without planning permission or, in the case of a breach of conditions, the matters on which it is alleged that conditions subject to which planning permission was originally granted have not been complied with (s. 23 (2)). If the authority requires steps to be taken to restore land to its condition before development took place or for securing compliance with the aforesaid conditions, then the notice must specify the steps which are to be taken and also the period within which they are to be taken (*ibid.*). This period will, of course, vary according to the circumstances of each case and if heavy demolition work is required it may well have to be quite an extended period if it is to be reasonable.

6. An enforcement notice will not take effect until the date specified in the notice itself which date must not be earlier than twenty-eight days from the date of the service of the notice (s. 23 (3)) the object of this interval of time being to allow the recipient of the notice an opportunity to consider his position and to lodge an appeal against the notice if he so desires (s. 23 (4)). During the intervening period between the service of the enforcement notice and the date of its coming into operation the recipient may, if he so desires, apply under s. 18 (1) for planning permission to retain the buildings which the enforcement notice alleges have been erected without planning permission, or to continue the use of land which the enforcement notice alleges has been commenced without planning permission, and if action of this kind is taken the enforcement notice will be of no effect pending the final determination of the application, and if the application is granted and the requisite planning permission given, the enforcement notice will not come into effect at all (s. 23 (3) proviso (*a*)).

7. There is an alternative course of action open to the recipient of an enforcement notice and that is to challenge the

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[2] Three years from July 1, 1948 in cases to which s. 75 of the Act applies.

notice by appealing, within the period of time which must elapse between the service of the notice and its coming into operation, to a Court of summary jurisdiction (s. 23 (4)) from whose decision there is a further appeal to quarter sessions (s. 23 (5)). Pending the final determination or withdrawal of any such appeal the enforcement notice will be of no effect (s. 23 (3), proviso (*b*)).

8. When an enforcement notice is challenged before the justices it may be assumed that a major ground of challenge will be that the notice is improper by reason of the fact that that (whatever it is) in connection with which the notice has been served is not development within the Act and is, therefore, beyond the pale of planning control and the sanction of an enforcement notice. This mode of argument must necessary lead to a detailed consideration in the provisions of s. 12 of the Act already outlined above and in connection with which quite a variety of nice points is likely to arise. From s. 12 itself it will lead further to a consideration of the Town and Country Planning (Use Classes) Order, 1948, made pursuant to s. 12 (2) (*f*) and specifying various changes of use which are put outside the definition of development and, accordingly, outside the enforcement provisions of s. 23. As has been mentioned, an appellant under s. 23 (4) of the Act, in submitting before the justices that that which he has done does not constitute development, need have no fear of the fact that the Minister may have already determined in the affirmative the question, propounded under s. 17, of whether the appellant's proposals constituted development because the Minister's decision of that question is not final for the purposes of an appeal under s. 23 (4) of the Act (s. 17 (2) proviso).

9. On an appeal under s. 23 (4) an appellant may admit that that which he has done *does* constitute development but insist that he had planning permission for it. This will not, of course, lead to a consideration of whether or not he had the express planning permission of a local planning authority for his development (for that is simply a matter of record about which there could conceivably be no argument) but it *will* lead to a consideration of whether or not his admitted development is "permitted development" within the meaning of the Town and Country Planning (General Development) Order, 1948, in respect of which he was entitled to the automatic planning permission granted under the provisions of that Order.

If the justices are satisfied that that which has been done does not constitute development at all and, accordingly, that "no [planning] permission was required in respect thereof" they are bound to quash the enforcement notice (s. 23 (4) (*a*)). They are likewise bound to quash the notice if, on it being admitted or proved that that which has been done constitutes development, the justices are satisfied that the development is "permitted development" under the General Development Order, 1948, and, accordingly, that "no [express planning] permission was required in respect thereof" (*ibid.*).

10. In a case where an enforcement notice relates not to the carrying out of development without planning permission but to a breach of conditions subject to which planning permission was granted, the only matter which will be before the justices (so far as the conditions themselves are concerned) will be whether the conditions have or have not been complied with (s. 23 (4) (*a*)).

It is to be observed that in attaching conditions to planning permissions local planning authorities (and also the Minister) have wide discretionary powers which must, of course, be exercised reasonably. If they are to be exercised reasonably it is submitted that the conditions must be related to, and dictated by, the requirements of proper planning and not otherwise. (In this connection it may be noted, in passing, that a condition stipulating for the payment of an annual sum of money to a local planning authority as security in the final fulfilment of a number of conditions subject to which planning permission was granted has been held by the Minister on appeal to be improper, the Minister being advised that the general rule of law in such matters is that no money can be demanded from any person except on distinct authority laid down by statute (*vide* Case III/16 of the Ministry of Town and Country Planning Bulletin No. 3 of Selected Appeal Decisions, summarised *ante*, p. 505)). The justices, however, when hearing an appeal under s. 23 (4) of the Act must direct their attention not to the merits or demerits of such conditions as have been imposed but to the much narrower issue of whether the conditions have been complied with; that is the sole scope of their enquiry and if they are satisfied that the conditions (whatever they were) have in fact been complied with, they must quash the enforcement notice (s. 23 (4) (*a*)).

11. If the justices are not satisfied as they are required to be before they can quash an enforcement notice under

s. 23 (4) (*a*) of the Act, they are bound to uphold the notice and dismiss the appeal (s. 23 (4) (*c*)) except in a case where they neither quash nor uphold the notice but vary it, which they are entitled to do if they are satisfied that the service of the notice was proper but that the requirements of the notice relating to the steps to be taken (a) to restore land to its condition before the development in question took place, or (b) to secure compliance with conditions subject to which planning permission was granted, exceed what is necessary in the circumstances (s. 23 (4) (*b*)).

12. As has been mentioned an enforcement notice cannot in any case come into effect until the expiration of at least twenty-eight days from the date of its service (s. 23 (3)) and if it is the subject of an appeal under s. 23 (4) it will not, of course, come into effect until the final determination or the withdrawal of the appeal (s. 23 (3) (*b*)), but in a case where the justices uphold an enforcement notice (with or without variation) they may, if they think fit, direct that the enforcement notice shall not come into force until such *later* date as they determine provided, however, that any such later date cannot be later than twenty-eight days from the determination of the appeal (s. 23 (4) proviso).

13. If an enforcement notice which has come into operation is not obeyed the local planning authority may enter on the land affected by the notice and carry out by means of the demolition or alteration of buildings or works, the requirements of the notice and having done so may recover as a simple contract debt their reasonable expenses of so doing (s. 24 (1)). The action for recovery of such expenses is taken against the person who is the owner (as defined in s. 119 (1)) of the land at the date when it is sought to recover the expenses (*ibid.*), and in any such action that person is not entitled to challenge the validity of the enforcement notice if he had an opportunity (which he failed to take) of appealing against the notice under s. 23 (4) during the period of time which necessarily had to elapse (s. 23 (3)) between the service of the notice and its coming into effect (s. 24 (1)).

It will be noticed that a person against whom an action for the recovery of expenses is taken under s. 24 (1) of the Act may not necessarily be the person who improperly carried out, without planning permission, the development of which complaint is made or who broke the conditions subject to which planning permission was originally granted, because action for the recovery of expenses under s. 24 (1) is to be taken against "the person who is then the owner of the land". Any expenses, however, which are incurred either by an *owner or occupier* of land in complying with an enforcement notice, or any sums paid by an *owner* of land under s. 24 (1) in respect of the expenses of a local planning authority in taking steps to enforce the provisions of an operative enforcement notice, are deemed to have been incurred by, or to have been paid for the use and at the request of, the person by whom the development was originally carried out (s. 24 (2)) to whom recourse for reimbursement must be made by any subsequent owner or occupier of the land who incurs expenses as a result of the service upon him of an enforcement notice.

14. If an enforcement notice requires any use of land to be discontinued, or any conditions, subject to which planning permission was granted, to be complied with, then any person who uses or causes or permits land to be used in contravention of the notice is guilty of an offence and liable on summary conviction to a fine not exceeding £50 and in the case of a continuing offence to a fine not exceeding £20 per day (s. 24 (3)).

15. It is too early for any case law to have been decided under s. 23 of the Act, but the enforcement of planning control under earlier legislation has in recent years been before the Courts on a number of occasions and reference to the following cases may usefully be made when considering the enforcement provisions of s. 23 :—

(1) *Mills & Rockleys, Ltd.* v. *Leicester City Council*, [1946] K. B. 315; 115 L. J. K. B. 373.
(2) *More O'Ferrall, Ltd.* v. *Harrow Urban District Council*, [1947] K. B. 66; [1947] L. J. R. 520.
(3) *Taylor* v. *Brighton Corporation*, [1947] K. B. 736; [1947] L. J. R. 1103.
(4) *Hendon Borough Council* v. *Stanger*, [1948] K. B. 571; [1948] L. J. R. 1008.
(5) *Capper* v. *Williams*, [1947] K. B. 994.
(6) *Swindon Corporation* v. *Pearce & Pugh*, [1948] L. J. R. 1540; [1948] 2 All E. R. 119.

Conditions Imposed on Planning Permission

16. It is desired in conclusion to refer once more to s. 23 (1) of the Act and to draw special attention to the fact that under that section an enforcement notice must be served, if it is to

have any effect at all, *within four years of the carrying out of the development* in respect of which complaint is made. Development, presumably, cannot be said to be "carried out" until it is completed and it is submitted, accordingly, that the four-year period will not begin to run until the development in question is finally and fully completed.

This four year limitation is new to planning law. It is a period which will have to be watched most carefully by all local planning authorities because once it has expired planning control over development irregularly carried out without planning permission or carried out subject to conditions which have been broken ceases to have any force. The effect of this four year limitation upon what are popularly called "temporary planning permissions" is so startling and regrettable that it is impossible to resist the thought that the limitation is going to have effects which were never envisaged when it was enacted.

17. It has been, and still is, customary for local planning authorities in areas which have suffered heavy war damage to grant temporary planning permissions. The redevelopment of various war-damaged areas within the district of any local planning authority cannot, of course, take place all at the same time, and local planning authorities will have to arrange the order in which redevelopment on a permanent basis of its war-damaged areas is to be progressively dealt with, for not all such areas have equal claims for speedy treatment. In the meantime *some* sort of development within *all* the war-damaged areas will be desirable certainly in the local, and probably in the national, interest. Local planning authorities, accordingly, have adopted the practice of granting in connection with their war-damaged areas temporary planning permissions for, say, five years, six years, nine years, twelve years or even fifteen years, dependent upon the point of time at which they believe, having regard to numerous and varying circumstances, it will be possible for redevelopment of any particular war-damaged area to be commenced on a permanent basis. There is clearly no point in granting a temporary planning permission for as little as three years if a local planning authority have reason to believe that redevelopment on a permanent basis will not on that particular plot of land be commenced for, say, six years.

18. It is to be noted that temporary planning permissions were first given statutory recognition by s. 3 of the Town and Country Planning (Interim Development) Act, 1943, and

under the Town and Country Planning Act, 1947, a temporary planning permission *must* now be a planning permission which is granted *subject to a condition* requiring the removal of buildings, or the discontinuance of a use, and the reinstatement of land at the expiration of a specified period (s. 14 (2) (*b*)). Thus, if a local planning authority wishes to grant a temporary planning permission for, say, nine years, it will grant planning permission subject to a condition that the buildings covered by the permission will be removed at the expiration of nine years. Unfortunately, the effect of s. 23 (1) is such that a condition of this kind will not be enforceable after the expiration of four years from the final completion of the temporary buildings. At the expiration of the nine years the local planning authority could not *then* require, by way of an enforcement notice, the removal of the temporary buildings and in a case where the then owner refused to demolish them the only way the local planning authority could secure their removal would be by taking action under s. 26 of the Act (relating to authorised development) and this would involve the local planning authority in the payment of compensation under s. 27 (1).

19. Thus it is clear that no local planning authority can now safely grant a temporary planning permission for a period longer than, say, three years and eleven months from the carrying out of the development in respect of which the temporary permission is granted. If the building is not demolished at the expiration of that period the local planning authority will then have one month in which to serve an enforcement notice, which notice, if it is to have any effect at all, must be served within four years of the completion of the temporary buildings. As it may be difficult for a local planning authority to know exactly the date when the temporary development has been "carried out" or, in other words, to ascertain when exactly the temporary buildings were completed, it will be safer for the authority, in granting the temporary planning permission, *to specify the actual date by which the temporary buildings are to be demolished and the land reinstated* such date being, say, three years and eleven months from the date of the authority's decision. The authority will then have one month in which to serve an enforcement notice (should one be necessary) before the expiration of four years from the authority's decision. As the temporary development cannot legally be carried out *before* the authority's decision is given, the authority will

know for a certainty that in serving any necessary enforcement notice within four years of its own decision, it is bound to be taking action " within four years of [the] development being carried out ".

20. Sub-s. (1) of s. 23 undoubtedly contains a mistake which only amending legislation can cure. The sooner such legislation is passed the better, because not until it is passed can a local planning authority with safety grant a temporary planning permission for four, five, six or more years however much it may feel able, from a planning point of view, to do so and however much a developer ought, in the local or national interest, to be given such a permission. The defect in s. 23 (1) is technical in theory but drastic in operation.

Trunk Roads and Ribbon Development

By T. A. Blanco White, Barrister-at-Law

1. The Town and Country Planning Act, 1947, has left partially repealed the various earlier statutes dealing with these matters. The following note is intended to provide a brief guide to the effect of these partial repeals.

2. The Restriction of Ribbon Development Act, 1935, was divided so far as its substantive provisions went, into three parts. The first part, headed " Restriction of Ribbon Development ", has been repealed altogether, except for a power for highway authorities to fence certain roads; the power has now been extended to all roads. With this repeal all the planning restrictions of the 1935 Act have gone; now that the 1947 Act is in force they are unnecessary. The various provisions of the Trunk Roads Acts, applying the restrictions of the 1935 Act to trunk roads, have also gone.

3. Secondly, the 1935 Act gave power for the compulsory acquisition, for highway purposes, of land within 220 yards of a highway. This power remains in force, and so do the corresponding modified powers for land adjacent to trunk roads, given by the Trunk Roads Acts. The procedure for the compulsory purchase, however, is now that of the Acquisition of Land (Authorisation Procedure) Act, 1946.

4. Thirdly, the 1935 Act did two things: it empowered

highway authorities to keep parking places, and it provided for control of the construction of means of access from large buildings and "places of public resort" to highways. Both these sets of provisions remain in force. Under the sections dealing with means of access to highways, approval for construction is required as part of the obtaining of bye-law approval for development; the highway authority must be consulted by the local authority concerned. (Planning permission is needed too, of course : see below.)

5. The Trunk Roads Acts, 1936 and 1946, mainly provide machinery for the taking over of trunk roads by the Ministry of Transport from the ordinary highway authority. This machinery remains. These Acts only directly affected town planning proper through their application of the Restriction of Ribbon Development Act, 1935, to trunk roads; the sections that did this are repealed. In the Schedules to the Trunk Roads Acts, however, are to be found lists of trunk roads as existing in 1946, and the Acts themselves lay down the procedure for altering the lists.[1] It may be noted that orders made by the Minister of Transport under the Trunk Roads Acts, as to the creation of new trunk roads and the improvement of old ones, automatically form part of the development plan for the area concerned (1947 Act, s. 8 (1); and see the Town and Country Planning (Development Plans) Regulations, 1948 (No. 1767), reg. 25, *ante*, p. 410).

6. The Restriction of Ribbon Development (Temporary Development) Act, 1943, was purely temporary in character and has been repealed entirely apart from transitional provisions; these are to be found in the 1947 Act.

7. While the general powers of restricting ribbon development given by the 1935 Act have simply been merged in the wider powers of local planning authorities, a few special provisions need noting.

(i) Permission given or required under the 1935 Act is now treated as equivalent to "previous planning permission" : see as to this in particular the Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Regulations (No. 1520),[2] *ante*, p. 328, and the Town and Country

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[1] An additional procedure for creating new Trunk Roads now exists under s. 49 (2) (*c*) of the 1947 Act; it only applies where the creation of the new trunk road is consequent upon the stopping-up or diversion of an existing highway.

[2] Note that para. 3 of these Regulations must be read with caution: The words added (in connection with ribbon development) to s. 75 (2) (*a*) of the 1947 Act, "or with any building law", are apparently intended to mean something more like "and with any building law".

Planning (Enforcement of Restriction of Ribbon Development Acts) Additional Regulations, 1948 (No. 1126), *ante*, p. 235.

(ii) Applications pending on July 1, 1948, under the 1935 Act, for permission to construct means of access to roads, are carried over as applications under the 1947 Act for planning permission : see para. 13 of Sched. X of the 1947 Act, and para. 13 of the Town and Country Planning (General) Regulations, 1948 (No. 1380), *ante*, p. 321.

(iii) The powers of the Ministry of Transport to control development on trunk roads are preserved by the Town and Country Planning (General Development) Order, 1948 (No. 958), *ante*, p. 149. Any application for permission for development within 220 feet of a trunk road [3] must be referred to that Ministry by the local planning authority; to allow for consequent delays, an extra month is given for dealing with such applications. Further, any application for permission for a development likely to increase the traffic entering or leaving a trunk road must be the subject of consultation with that Ministry; no extra time is allowed for consultation.

(iv) The powers of highway authorities to control development along highways have been preserved by the same Order : applications for permission for development involving means of access to roads other than trunk roads, are to be the subject of consultation with the highway authority concerned. Again, no extra time is allowed for consultation.

It must be remembered in this connection that " means of access " are broadly defined, including, for instance, a street.

8. It follows from what has been said that in connection with pure planning matters it should seldom be necessary to refer in the future to the Restriction of Ribbon Development Acts or the Trunk Roads Acts, except to discover whether a given road is a trunk road or not.

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[3] Not 220 yards, as in the compulsory purchase powers: cf. para. 3 above.

Land Held for Charitable Purposes

The Minister of Town and Country Planning desires to draw the attention of ecclesiastical and charitable organisations, and persons charged with the management of land held on charitable trusts, to the provisions of s. 85 of the 1947 Act.

Section 85 is applicable only to land held for ecclesiastical or charitable purposes on July 1, 1948. It divides land into two classes : land which is used directly for the purposes of the charity, and land which is used purely as a source of revenue. These two classes are referred to in this leaflet as " functional land " and " investment land " respectively.

In the case of functional land, no payment will be made from the £300 millions under Part VI of the Act, and no development charge will be imposed on any development of the land as long as it remains functional land. On its ceasing to be functional land (*e.g.*, on sale or diversion to commercial use), development charges will not be imposed unless the value of the land for its new use exceeds the value for the use prevailing in the neighbourhood, if planning permission for the change has been obtained before it ceases to be functional land; *i.e.*, the charity can reap the development value of the land up to the level of that use.

Investment land in the first instance receives no special treatment under s. 85; *i.e.*, a claim may be made under Part VI for loss of its development value, and development will be liable to development charge. Under sub-s. (5) of the section, however, the Minister may direct that investment land shall be treated as if it were functional land, if he is satisfied that it was held for charitable purposes on July 1, 1948, and that it is reasonable to treat the land as functional land in view of any proposals submitted to him for its future use. If, however, such a direction is given and the land ceases to be held for charitable purposes before it is put to a functional use, a full development charge may be levied when it is developed.

An application under sub-s. (5) may be made at any time before July 1, 1951. If the application is unsuccessful, a payment under Part VI of the Act is still admissible. All claims for a payment under Part VI must be submitted to the Central Land Board by March 31, 1949. **Ecclesiastical and charitable organisations are therefore advised, in their own interests, to submit a claim in good time, even if they also contemplate applying for a direction under s. 85 (5).** If they do not take this precaution, they may find themselves denied the benefit of s. 85 and also debarred from a payment under Part VI.

Applications under s. 85 (5) should be made on form C.T.L., which may be obtained from The Secretary, Ministry of Town and Country Planning, 32 St. James's Square, London, S.W.1, or from any of the Ministry's Regional Offices.

Explanatory Leaflet, P. R. 4.
October 7, 1948.

Single Plot Owners—Procedure

The " drill " for single plot owners is as follows :—

1. Make an S.1 claim at once, and in any event before March 31, 1949.

2. Apply for planning permission if necessary. If planning permission was granted before July 1, 1948, it may have lapsed and may require to be renewed by application made before January 1, 1949.

3. When it can be seen that building will commence within twelve months, apply to the Central Land Board on Form D.1 for determination of the development charge, informing the Board that it is claimed that the plot falls within the concession CLB/4, dated July 30, 1948 (*ante*, p. 393), as extended by CLB/8 (*post*, p. 561).

4. When the development charge is determined the Board will invite the owner to sign an undertaking whereby the development charge may be set off against the amount of the payment to be received from the £300 millions.

It is anticipated that the Section 58 scheme will provide for payment in full of S.1 claims by single plot owners (as assessed by the Board) in so far as the claim extends to development by building a house. The amount of the assessed claim and the amount of the assessed development charge will normally be the same. Single plot owners are therefore, in effect, relieved of development charge, *provided they have carried out the " drill "*.

Valuation and Management

By W. A. Leach, F.R.I.C.S.

I. Development Rights of Owners (*ante*, p. 38).
II. Effect of Planning on Property Management (*ante*, p. 92).
III. Development Value—Development Charges—Effect on Property Values (*ante*, pp. 181, 263).
IV. Compensation for Planning Action other than Development (*ante*, p. 343).
V. **Compensation for Acquisition of Land.**
VI. Valuation for Injurious Affection.

V. Compensation for Acquisition of Land

(continued from p. 491, *ante*)

WAR-DAMAGED PREMISES—WAR-DAMAGED PROPERTIES ACQUIRED UNDER 1947 ACT

35. *General rule.*—S. 53 of the 1947 Act makes special provision for properties for which, apart from compulsory acquisition, a cost of works payment would have been the appropriate payment in respect of war damage which has not been made good. Where, in such circumstances, notice to treat is served after August 6, 1947, the value of any interest in the property being acquired is to be arrived at as though the whole of the damage had been made good before the date of the notice to treat, the right to receive the value payment substituted for the cost of works payment under s. 14 of the War Damage Act, 1943 (or the share thereof applicable to the interest being acquired) passing to the acquiring authority together with any interest due thereon. The authority takes the whole of the interest, the person dispossessed being treated as though he had carried out repairs and recovered a cost of works payment which does not carry a right to interest under the War Damage Act, 1943.

Where a cost of works determination has been made under Treasury Direction No. 8, the phraseology of the War Damage Act, 1943, creates some difficulty in deciding whether or not that payment is the 'appropriate payment'. The better argument seems to be, however, that a determination under s. 7 of that Act is required to be made subject to the other provisions of the Act, that s. 20 enabled the Treasury Direction to be given, and that the determination of a cost of works payment is made under s. 7 subject to s. 20. That payment would, therefore, be the appropriate payment but for the acquisition of the property.

36. *Alterations since occurrence of damage.*—Where works other than the making good of war damage have been carried out on the land since the occurrence of war damage, and the making good of the damage would involve the removal of those works, the value of any interest being acquired is to be taken as the greater of the two following:—

(a) the value with the war damage made good and the additional works removed, or

(b) the value with the war damage not made good as far as such making good would entail the removal of the new works.

The same procedure is to be followed where land which could be acquired compulsorily is purchased by agreement in pursuance of a contract made after the appointed day.

37. *Application of rule before and after appointed day.*—These rules apply also to war-damaged land in respect of which notice to treat was served between the passing of the Act (August 6, 1947) and July 1, 1948, subject to the provisions noted in para. 7 (*ante*, p. 421) and after July 1, subject to the provisions noted in para. 9 (*ante*, p. 422).

38. *Protection of Rule 5.*—S. 56 protects the right to equivalent reinstatement under Rule 5 of the 1919 Assessment of Compensation Act in those cases in which, but for the acquisition, a cost of works payment would have been made.

39. *Value payments.*—Where the appropriate payment under the War Damage Act, irrespective of compulsory acquisition, is a value payment the acquisition will proceed on normal lines.

40. *Effect of Landlord and Tenant* (*War Damage*) *Acts, 1939 and 1941.*—It will be recalled that where a tenant has served a conditional notice of retention under s. 2 of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, this takes effect as a notice of disclaimer sixty days after the War Damage Commission have formally determined to make a value payment, except that where a cost of works payment is converted to a value payment by reason of compulsory acquisition (War Damage Act, 1943, s. 14) the conditional

notice takes effect as an unconditional notice of retention (s. 4 (*c*) of Landlord and Tenant (War Damage) (Amendment) Act, 1941). The effect of this latter provision is that the lease remains in force, the tenant has an obligation under s. 10 of the Landlord and Tenant (War Damage) Act, 1939, to render the premises fit as soon as possible, but has no liability for rent (or a modified liability if some use can be made of premises) until they are rendered fit. Since, however, the premises are to be deemed for purposes of compulsory acquisition to have been repaired, the interests must be valued on the assumption that the landlord is receiving his rent and the tenant has fulfilled his obligation as to repairs, the landlord's reversion being to a new or substantially reinstated building.

The same position will arise where the tenant has served notice of retention or the landlord has served notice to avoid disclaimer.

41. *Duplication of supplementary compensation under Act of 1944.*—Subsequent to the passing of the 1944 Planning Act the position as regards supplementary compensation has been complicated by S. R. & O., 1947, No. 390, made under s. 11 of the War Damage Act, 1943. This Order provides that the amount of value payments is to be increased by 45 per cent. except that where, but for compulsory acquisition, an owner would have been entitled to a cost of works payment, the increase will be 60 per cent. There is no qualification here as to owner-occupation as under s. 58 of the 1944 Act.

Thus the position arises that an owner-occupier who, but for the acquisition, would have been entitled to a cost of works payment, may be entitled to 30 per cent. or 60 per cent. on the value of buildings as supplementary compensation under s. 58 of the 1944 Planning Act, and 60 per cent. on the value payment under s. 11 of the War Damage Act, 1943.

42. The 1947 Act, Sched. VII, para. 1, makes retrospective provision to correct this by enacting that the compensation payable on the compulsory acquisition of the land shall be reduced by the amount of the supplementary compensation or the amount of the increase in the value payment, whichever is the less. This adjustment is to be made by the War Damage Commission (who are to settle any disputes) paying a reduced amount in respect of the value payment to the owner and paying over the amount of the reduction to the acquiring authority (SI 1948 No. 207). As the value payment carries

interest at 2½ per cent. the interest on the portion of the value payment so dealt with is, as from the date of acquisition, also to be paid over to the acquiring authority, who, however, remain responsible for payment of interest on purchase money including supplementary compensation as from the date of entry to date of completion of acquisition. The rate of interest in this case is 4 per cent. up to May 1, 1947, and 3½ per cent. thereafter: Acquisition of Land (Rate of Interest on Entry) Regulations, 1947 (S. R. & O., 1947, No. 791).

Provision is also made for a similar adjustment of supplementary compensation where war-damaged land which could have been acquired compulsorily has been acquired by agreement.

The supplementary payment for improvements under s. 59 of the 1944 Act is not affected.

Ministry of Town and Country Planning Circulars and Memoranda

[continued from p. 470, *ante*]

Circular No. 60, dated October 11, 1948. Schemes in Force under Previous Planning Acts. Containing instructions to local planning authorities as to the steps to be adopted to bring to an end Schemes preserved by para. 7 of the Tenth Schedule to the Act of 1947. [6d.]

[Note. Circular No. 59 has not yet been issued.]

Explanatory Leaflet P.R. 4, October 7, 1948. Land held for Charitable Purposes : see *post*, p. 541.

Dealings with Land under the Planning Acts

By Harold Potter, LL.D., Barrister-at-Law

I. Inquiries Preliminary to Contract (*ante*, p. 48).
II. Contract for Sale (*ante*, p. 104).
III. Requisitions on Title (*ante*, p. 188).
IV. Conveyances on Sale (*ante*, p. 273).
V. Leases (*ante*, p. 353).
VI. Mortgages (*ante*, p. 426).
VII. **Settlements and Wills.**

Settlements and Wills

1. It is becoming trite to remark that the Town and Country Planning Act, 1947, ignores altogether all its repercussions on succession on death under a will or settlement. To take a simple illustration : A builds a garage without planning permission and dies having devised the land to B. The planning authority direct B to remove the garage, which he does. The expense of doing this would in A's lifetime have been borne by him (s. 24 (2)), but is B entitled to sue A's estate? If this is so the residuary beneficiaries might have some ground for grievance, since they obtained no benefit and suffered all the detriment. Nevertheless, s. 24 (2) seems to make such expenses the personal liability of the person by whom the development was carried out and, therefore, presumably a devisee can claim recoupment out of the general estate of the testator.

It is not, of course, the purpose of this article to imagine all the problems that this neglect of provision by the Act may raise and then guess the answers. Practitioners will need to be on their guard, but, fortunately, the Act *does* protect agents and trustees from the particular liability mentioned above when they have insufficient money : s. 24 (5) (*d*); Town and Country Planning (General) Regulations, 1948 (No. 1380), para. 8, *ante*, p. 319. This protection presumably operates only as against the local authority and not as against the devisee who carries out the enforcement notice. All we propose to attempt here is to consider a few conveyancing points where provision can be made to assist in making the path straight. The first problem arises from the question of the severance of development value from the land.

(a) DEVELOPMENT VALUE

(i) *Testator Dying before the Appointed Day*

2. The Act says that " the right to receive payment under any scheme made under this Part of this Act [the section 58 scheme] . . . shall be transmissible by assignment or by operation of law as personal property " (s. 64 (2)), subject, of course, to regulations requiring notice to be given to the Central Land Board of " any such assignment " : s. 64 (2), proviso; Claims for Depreciation of Land Values Regulations, 1948 (No. 902), reg. 7. On the other hand the right to payment under the section 58 scheme " in respect of an interest in land " vests in the person who was the owner of that interest on the Appointed Day. " Owner " includes a " trustee " who is entitled, or would be entitled if the land was let, to receive the rack rent : s. 119. It should also be borne in mind that claims in respect of development value should be made before March 31, 1949, but payment is not anticipated until 1953.

Where the testator has died before the Appointed Day, but no assent has been made to a devise, the right to make the claim would vest in the personal representatives. The personal representatives would, therefore, either themselves have to make the claim or alternatively assent to the devise and allow the devisee to make the claim. The devisee should give notice of the assignment to the Central Land Board (*ante*, p. 493). In view of the difficulty in some cases of determining whether any claim should be made, no doubt personal representatives will consult their beneficiaries without delay.

3. Whether the assent to the vesting of the claim in the beneficiary must be in writing in accordance with the Administration of Estates Act, 1925, s. 36 (4), may be debatable, because the right is probably intended to operate only as a chose in action and is not therefore a " legal estate " in land. The fact that the right is personal property does not, of course, prevent it being an interest in land and, consequently, there is every advantage to be gained by having an assent in writing, which being under hand does not require a stamp : *Kemp* v. *I. R. C.*, [1905] 1 K. B. 581. On the other hand it would seem improbable that an assent to the vesting of the

fee simple would automatically carry with it an assent to the vesting of the development value, though if an assent in writing is not required such an assent to the devise might in appropriate circumstances be deemed to be an assent in respect of the development value. The importance of the last point may arise when personal representatives have neglected to take steps to make a claim.

In our view, then, either the personal representatives should make a written assent to the devise containing an express assent to the vesting of the development value completed by notice to the Central Land Board or they should, in consultation with the beneficiary, make no assent and pursue any claim that may be agreed upon with the beneficiary. When the beneficiary is under incapacity they must proceed as in the case of any trustee.

(ii) *Will before but Testator Dying after Appointed Day*

4. Where a testator devises an estate in a will executed before the Appointed Day but dies after that date the problem immediately arises whether or not the devise carries with it the right to development value. Though this may be a very serious matter, *e.g.*, in a claim in respect of minerals, it is likely to be short lived as a problem. It is clear that if A devises Blackacre in which he has the fee simple and under which there are valuable minerals the devisee will get substantially less if he does not become entitled to the claim for development value. The difficulty is peculiarly likely to arise when minerals are already being worked, since no development charge arises for three years (s. 81 (2)) and there the anomalous position might arise that the devisee gets the mineral rights for three years only.

In the case of the Law of Property Act, 1925, the profession had an example of this difficulty arising from neglect to provide for change in interest (which might have been taken to heart !) in the case of individual shares. Speaking generally, a devise of realty does not carry with it (whenever the will was executed) an undivided share in land (*Re Kempthorne*, [1930] 1 Ch. 268), though the devise has become operative to do so where the will has been confirmed since 1925 (*Re Wheeler*, [1929] 2 K. B. 81 n.; *Re Warren*, [1932] 1 Ch. 42). This seems a question of construction in which the devisee is favoured (*Re Harvey*, [1947] Ch. 285). Nevertheless, the vital issue is whether this Act converts mineral rights into a claim that is not a claim in the land at all. If this is so, in our opinion the devise is adeemed to that extent notwithstanding s. 23 of the Wills Act, 1837, since the operation of the Town and Country Planning Act, 1947, is to create something entirely new and not, therefore, capable of being construed as within the devise. It is true that the right to claim depends (" subject to the provisions of any scheme ") upon ownership on the Appointed Day, but so soon as it is vested it would seem from the language of s. 64 to vest as a separate interest both in character and extent. This would, therefore, not pass under a devise of the land on the same sort of principle as the cases where land was sold and part of the purchase money remained on mortgage (*Re Clowes*, [1893] 1 Ch. 214; *Re Richards*, [1921] 1 Ch. 513).

5. Assuming this to be the correct interpretation testators must consider whether or not wills need reconsideration. Obviously the really important cases are those of land having valuable minerals under it or of building land,[1] and it is the former that is most likely to be overlooked. Assuming, as will probably be the case with the mineral claims, that the testator wishes the beneficiary to get the advantage of the development the obvious course is a short codicil expressly providing for this contingency. If the testator, on the other hand, wishes the opposite course it may save expensive litigation, where the claim is likely to prove large, for a codicil expressly to declare the opposite, since then no question can arise whatever construction the Court may ultimately put upon the Act.

In the precedent of a codicil appearing at the end of this article it will be observed that express reference is made to the relevance of the payment having been made. This meets another difficulty. It could be argued that although the right to development value goes with the devise in the first place this may not happen (a) after a claim has been made by the owner, or (b) after the claim has been met by payment or issue of stock. Obviously in the second case where the claim is met by money payment, which is not intended as the normal method, it would present all sorts of problems if the devise was not regarded as adeemed to that extent. If stock is issued, again as a matter of construction, it is difficult to see how the devise can be treated except as adeemed apart from express provision, but there seems no reason why provision should not be made and the precedent so provides.

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[1] It has been asserted (*post*, p. 564) that there is no such thing as " building " land (apart from dead ripe land certified under s. 80), but the expression is here used in the sense in which it would have been understood before the Appointed Day.

(b) Description in Devises

6. The obvious question now arises whether an inaccurate description of a use of property will invalidate a devise. For example, where A devises his dwelling-house at South Terrace, Puddleton-on-Mud, to his niece Jane and at A's death the dwelling-house may have ceased to be used as such and have become a boarding-house, which is a different class of use altogether: see the Use Classes Order, 1948 (No. 954), Sch. Class XIV; or even have been converted into *two* dwelling-houses by conversion into flats: s. 12 (3) (*a*). This suggestion is not so outrageous as it seems at first sight, if it is remembered the havoc played with devises of undivided shares by the Law of Property Act, 1925: cf. *Re Harvey*, [1947] Ch. 285 and cases there cited. After all the only person who can effectively dispose of a use as a dwelling-house in premises with a permitted or existing use as a boarding-house is the Minister acting by the local planning authority and the Central Land Board and, speaking generally, such a disposition will only be "sold" at a "price" fixed by the Board which cannot be challenged. Therefore, it is not wholly unreasonable to say that it cannot pass under a will.

The first conclusion to draw is the desirability of avoiding all descriptions referring to use where this is possible and it is, indeed, rare where it is not possible. For such expressions as "my house", etc., use the colourless expressions "premises situate at" or "known as".

Secondly, we have taken a pessimistic view of the situation. In most cases, in our opinion, the will will be helped out by the principle *falsa demonstratio non nocet*. Nevertheless, we may call attention to *Re Mulder*, [1943] 2 All E. R. 150, where a disposition of a business as if it were the testator's own was held not to pass the testator's share of it.

Where, however, the testator may wish the devise to be dependent upon a specific use it will be necessary to be very precise and no doubt a conditional form will be used.

(c) Conditional Devises and Restricted Use

7. The next serious difficulty created by the Act, and one which will affect wills coming into operation before and after the Appointed Day, arises from restricted use. The simplest example is a devise of a dwelling-house to a daughter for residence only. Under the Act there is a variety of ways in which the daughter may cease to be able to use as a residence, *e.g.*, by service of a discontinuance of use order under s. 26.

Again the not uncommon devise to the son so long as he continues to farm may similarly be upset in various ways, including compulsory acquisition for development.

It must be borne in mind that a condition *precedent* in a devise of *realty* may avoid the devise even if it is impossible or illegal : *Re Turton*, [1926] Ch. 96. This point is obviously of the greatest importance where the devisee is to take the property for any particular use. In *Re Turton*, *supra*, for example, it was held that the gift was upon condition to carry on the testator's business in the way designated. Actually the testator himself had made the condition impossible of fulfilment but the gift failed. Furthermore, if the limitation is subject to a gift over on the happening of the condition and it happens, the first interest determines notwithstanding that the second limitation cannot take effect : as in *Doe* d. *Blomfield* v. *Eyre* (1848), 5 C. B. 713, where the person to take the gift over had died in the lifetime of the testatrix and, therefore, could not possibly take.

8. The law relating to conditions and even more its application to wills, is extremely difficult, not to say obscure, and this is not the place to pursue it. The point is that restricted use imposed by the Act and capable of being varied from time to time may manifestly interfere with any such provision. In our opinion wherever conditions relating to use of premises are inserted the best method of approach is probably an express clause excluding performance of the condition wherever it is rendered impossible by anything done under the Act.

9. Where the will has come into operation before the Act and the effect of the condition is frustrated by its operation, as, for example, where the premises cease to be capable of being used as a dwelling-house, we do not see that short of some legislation the hardship can be avoided. It is the opposite case to that provided for under the Settled Land Act, 1925, s. 106, where exercise of powers under the Act defeats the operation of the condition.

(d) Limited Interests and Waste

10. We think that any planning contravention which affects a material change in user must be waste at law. It is thought that such a change must result in damage or alternatively must, because it has been disregarded, be treated as not a contravention for this purpose. We think that this view of the relation between waste and contravention follows from the principles laid down in the leading case of *Doherty* v. *Allman*

(1878), 3 App. Cas. 709, from which we have had occasion to cite in an earlier article (*ante*, p. 353). We mention it here because (i) of the common practice of making tenants for life unimpeachable for waste, and (ii) of the liability of trustees for sale. The second point requires attention also in connection with authorised change of use and is not, therefore, our immediate concern. The first point can give rise to obvious difficulty. If a tenant for life is made unimpeachable for waste, does this exclude his liability to the remainderman in respect of planning contravention? This may depend upon whether the formula includes the words " at law or in equity ". Under s. 135 of the Law of Property Act, 1925, it is assumed that liability even for equitable waste can be excluded by express intention notwithstanding that equitable waste is the *unconscientious* use of legal powers (see *Baker* v. *Sebright* (1879), 13 Ch. D. 179 at p. 183, *per* Jessel, M.R.). If the additional formula is employed it is difficult to see upon what ground a tenant for life could be held liable in waste for a planning contravention and in our opinion even without addition it would be necessary to show some deliberate intention. The consequence of these reflections is that henceforth wherever the words " without impeachment of waste " are included in the grant of a life interest they should be modified by some such expression as " except any act or omission constituting a contravention of the Town and Country Planning Act, 1947 ".

11. It should, however, be borne in mind that the only limited owners liable for waste are those who hold (i) for a term of years; (ii) for life; or (iii) so far only as equitable waste is concerned, as tenant in tail after possibility of issue extinct, or in fee simple subject to an executory limitation over (*Re Hanbury's S. E.*, [1913] 2 Ch. 357). It would be difficult to reconcile the notion of equitable waste and an " innocent " planning contravention, though in our view such contraventions will, for years to come, be the most frequent form, so that there are many limited owners who will fall outside the category, in whole or part, of those who will be liable in waste for these contraventions.

Now it must not be forgotten that under s. 74 of the Act a development charge can be fixed by the Central Land Board for a contravention of the Act. Theoretically this will be payable by the person who contravenes the Act, but if the illegal use is to be continued (as it would be in such a case) it would seem that the user also may be called upon to pay (s. 74 (2)).

Assuming then that a remainderman (and we use the expression widely) is in fact called upon to pay or otherwise suffers damage, can he recover against the limited owner or his estate in circumstances where he is not technically liable for waste? He could do so under s. 24 (2) of the Act, if the contravention was actually committed by the limited owner, but this provision only relates to compliance with an enforcement notice. Where the development charge is assessed under s. 74 there appears to be no similar provision, presumably because only the person named in the determination will have to pay.

For this reason we are inclined to think that there is room for the rather novel proposal that trust instruments should contain a clause declaring any estate owner liable and directing that the trustees shall have power to enforce the liability.

12. But supposing the words " without impeachment of waste " are omitted there is still the question whether *any* material change of use would constitute waste. In our view this must be so on the generally admitted principle discussed in *Meux* v. *Cobley*, [1892] 2 Ch. 233, since the change of use in fact changes the character of the inheritance; but on the authority of the same case a remainderman could only succeed in an action for damages or injunction if he could prove damage, that is, that the waste was not " meliorating ".

If this view is correct it can lead to some unexpected consequences. If T, the tenant for life, decides to lease the principal mansion to A for the purposes of a school and A obtains the necessary planning permission, it would be difficult for B, the remainderman, probably, to show any pecuniary loss to the estate. But when T dies, even though B can determine A's lease he may not succeed in getting a planning permission to enable the house to be returned to its original function. The planning authority may well take the view that the school is more desirable in the interests of the neighbourhood than a mansion house.

No real hardship is caused in one sense because, at least in theory, T could have sold the mansion house under his statutory power. Nevertheless, in the case of a mansion house a restraint *may* be put upon this power of sale by requiring the consent of the trustees. This leads us to another question: Has the tenant for life any *power* to obtain a planning permission and so effectually defeat the clause limiting his power of disposition?

[*To be continued.*]

Will Forms

By Harold Potter, LL.D., Barrister-at-Law

Codicil to include Development Value in a Devise

This is a [second] Codicil made by me A.B. of *etc.* this —— day of —— to my will which bears date the —— day of ——.

I declare that all the right or interest in or claim to any payment made or stock issued in respect of depreciation in value under or by virtue of the Town and Country Planning Act 1947 of the land devised to C.D. in my said will shall be deemed to belong to and form part of such land for all the purposes of my said will provided that I shall die before any payment is made or stock issued;

And I further declare that any stock issued in respect of such depreciation as aforesaid shall be deemed to belong to and form part of such land as aforesaid so long as the same shall be held by me;

And in all other respects I confirm my said will.

[*Testimonium and attestation.*]

or

I declare that the [several] devise[s] [and bequests [1]] of land contained in my said will shall not be deemed to include any right or interest in any claim payment of money or issue of stock in respect of depreciation of value of the said land made under or by virtue of the Town and Country Planning Act 1947.

Miscellaneous Clauses

1. *Impeachment of waste.*

To A during his life [without impeachment for waste except any act or omission constituting a contravention of the Town and Country Planning Act 1947].

2. *Development value.*

Hereby devise to A B all the land and buildings at —— in the parish of —— [together with all the right or interest in or claim to any payment made or stock issued in respect of depreciation in value under or by virtue of the Town and Country Planning Act 1947 provided that I shall die before any payment is made or stock issued but if I shall die after such payment or issue together with any such stock issued to me and still held by me at my death].

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[1] This is material if leaseholds.

3. *Planning permission or development.*

To A during his life until he shall voluntarily make any [application for] development of the land within the meaning of the Town and Country Planning Act 1947 without the previous written consent of the trustees.

4. It is hereby declared that any estate owner under the Settled Land Act 1925 for the time being (including the personal representative or representatives of a deceased estate owner) [*or* the Trustees for sale for the time being] shall have power [with the consent of the Trustees] to apply for and if permission of the local planning authority is obtained to make such development or developments within the meaning of the Town and Country Planning Act 1947 of the [land] hereby devised [settled] as he [they] shall in his [their] absolute discretion think fit and for this purpose any capital money may be expended or raised and expended for the purpose of discharging all costs and expenses [and any development charge] incurred in making the application for or carrying out such development or developments and subject to any statutory provision to the contrary the Trustees shall in their absolute discretion determine whether or not such capital shall be repayable by the estate owner for the time being of the said land and if so whether or not by instalments and if so in what number and how charged upon the land.

5. *Planning contraventions.*

It is hereby declared that all costs and expenses (including any development charge) incurred in complying with any order notice or determination made or suffered in connection with any planning contravention shall be the personal liability of the beneficial owner hereunder responsible for causing or continuing such contravention and if more than one such person then the persons responsible shall be deemed liable in accordance with the decision of the Trustees whose decision shall be final and the Trustees shall have power to enforce such personal liability for the benefit of all persons interested under the settlement either by action at law or by deduction from any income payable to any such person or persons or howsoever otherwise in their absolute discretion.

Assent to Devise including Development Value

We, A B of *etc.* and C D of *etc.* the Personal Representatives of X Y late of —— who died on the —— day of —— and whose will was proved by us on the —— day of —— in the —— Probate Registry do this —— day of —— hereby:—

1. As Personal Representatives of the said X Y deceased assent to the vesting in E F of *etc.* of All that *etc.* [in fee simple subject to ——] [2] [for all the estate and interest of the said X Y at the time of his death].

2. As Personal Representatives as aforesaid assent to the vesting in the said E F of All that the right and interest in or claim to any payment made or stock issued in respect of depreciation in value under or by virtue of the Town and Country Planning Act 1947 of the said land to which this Assent relates for all the interest now vested in us [in respect of the fee simple [subject to ——]].

3. Declare that we have not previously hereto given or made any assent or conveyance in respect of any legal estate in the premises including the said right to payment or stock or any part thereof.

4. [*Acknowledgment of right to production.*]

As witness, *etc.*

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[2] The alternative of "in fee simple" or "for all the estate, etc.," is inserted because the latter expression is the customary form but the former (coupled with the additional words in brackets in clause 2) is much more convenient for the purpose of development value. It is necessary to inform the Board of the nature of the beneficiaries' interest since obviously several people may be interested in the development, *e.g.*, the freeholder and a long lessee. Consequently the use of the formula "in fee simple" is desirable and it does not seem that the personal representatives are thereby prejudiced since their covenant for title only relates to incumbrances created by themselves. The notice to the Central Land Board must also contain a sufficient description of the land.

Central Land Board Practice

POINTS FROM SIR MALCOLM EVE'S ADDRESS TO THE INCORPORATED SOCIETY OF AUCTIONEERS AND LANDED PROPERTY AGENTS ON SEPTEMBER 23, 1948, ON THE WORK OF THE CENTRAL LAND BOARD

Premature Applications for Assessment

Several thousand applications for assessment of development charge have been made long before the development is imminent. The practice of the Board is not to entertain applications for assessment of development charge made more than twelve months before the development is to take place.

Letting of Lodgings

A development charge will not be demanded where rooms are let in a private house or a paying guest is taken in, unless this amounts to the carrying on of a business of a boarding house or guest house.

Agricultural Cottages

Agricultural cottages are the subject of a non-statutory concession. Where a conditional planning permission has been obtained for the building of an agricultural cottage the development charge will be assessed but not levied. The owner of the land will be required to give an undertaking to pay the assessed development charge if and when the cottage is used otherwise than as an agricultural cottage.

Urgent Cases

In urgent cases the developer may send a cheque for the amount suggested by the District Valuer as being the appropriate development charge. The receipt of the Central Land Board for this cheque will be authority to proceed with the development pending the completion of formal documents.

The Section 58 Scheme

The five years for the preparation of the Section 58 Scheme has been divided as follows : nine months for the claimant to put in his claim with a possible extension of three months; three years for the valuation of claims by the Central Land Board (including references to arbitration and appeals to the Court); one year for the Treasury to produce the Scheme.

Units the Subject of an S. 1 Claim

The claimant has the right to choose his unit. The only restriction is that he should choose a unit which is capable of valuation by normal processes of valuation. The Central Land Board will exercise careful consideration before they use any powers of aggregration which may be conferred by the proviso to s. 60 (4).

"Building"

For the purposes of Sched. III, para. 3 (enlargement exempt from development charge), the Central Land Board are treating the word building as meaning a building in the singular and a building in the ordinary acceptance of the term. Thus, two semi-detached houses will be treated as two separate houses and a terrace of ten houses as ten separate houses.

Note, however, that under s. 112 (2) there may be an aggregation of the cubic content of the buildings of an "institution or undertaking".

Near Ripe Land

If a builder sells near ripe land, it should be sold at existing use value. [See also CLB/9, *post*, p. 562.]

Dead Ripe Land

For the purposes of the Central Land Board, dead ripe land is land in respect of which the Minister's certificate under s. 80 can be produced.

Claims by Mortgagees

S. 1 claims will be admitted from mortgagees in possession. Claims by a mortgagee not in possession will be treated as made by him as agent for the mortgagor unless the mortgagor objects. If he does so object the matter must be settled between the mortgagor and the mortgagee. A subsequent claim by a mortgagor, if made within time, would take precedence over a claim by a mortgagee.

Single Plot Owners

If a single plot owner is unable to start building before January 7, 1952, he will lose the benefit of the concession.

The concession does not apply to the building of a combined house and shop.

[Note. See also the concession in favour of single plot owners, *post*, p. 561, and the procedure for establishing a claim to be treated as a single plot owner, *ante*, p. 542.]

Appeal Against Assessment of Development Charge

There is no appeal against an assessment of a development charge. This is because the fixing of a development charge is, in effect, an offer to sell at that price the right to carry out a specific development. If the developer does not like the offer his remedy is not to accept it.

Calculation of the Cube of a Building

The calculation of the cube of a building is to be carried out on ordinary surveying principles.

S. 1 Claims—a Moral

If you do not make an S. 1 claim you will not get anything out of the global fund.

Doctors and Dentists

The Central Land Board will not generalise on the subject of development charges which may or may not be attracted by the use of rooms in a dwelling-house as a surgery, etc. Each case must be decided on its own facts.

Building Land

It can never be said that the " existing use " of land is its use as building land.

Contravening Use Under Renewed Planning Permission

Where a development contravening previous planning control is authorised by a planning permission limited as to time and when that time expires a fresh planning permission is granted for the continuation of the contravening use for a limited period development charge is payable if the permission results in an increase in value over the original use.

Development Charge and Monopoly Value

The Central Land Board have formulated their procedure for determining a development charge in respect of on-licenced premises about to be built, and premises for which it is proposed to apply for a licence (*i.e.*, those hitherto used for another purpose).

The charge will first be assessed in the ordinary way as if no monopoly value were payable. Then:

(a) In the case of a new licence (including cases to which section 73 of the Finance Act, 1947, apply), the actual monopoly value assessed for the new premises will be deducted, and the resulting figure will represent the charge.

(b) In the case of an ordinary or special removal, the notional monopoly value of the old premises will be deducted. If the removal is accompanied by surrender of other licences, their notional monopoly value will also be deducted.

(c) In the case of a planning removal, the notional monopoly value of the new premises will be deducted. This method is considered inevitable in view of the vagueness of the value of "pool" licences to be offset against it.

PRESS NOTICE: C.L.B./6.
October 6, 1948.

Dead Ripe Land—Fees

The Central Land Board have received inquiries from owners of land and their advisers on the question of professional fees where an S.1 claim is submitted in respect of land for which a "dead-ripe" certificate has also been sought from the Minister of Town and Country Planning under section 80.

The Board have already advised such claimants to submit an S.1 before March 31, 1949, to guard against the possibility that their "dead-ripe" certificate may not be granted. They now further advise that in these cases questions 27 and 28 should not be answered. If, subsequently, the certificate is refused, the S.1 will be returned by the Board for these questions to be answered, and the normal provisions regarding fees will apply.

PRESS NOTICE: C.L.B./7.
October 6, 1948.

Single Plot Owners—A Concession

On July 30, 1948, the Central Land Board announced arrangements affecting private owners who owned single plots before January 7, 1947. These arrangements entitled such owners if they started to build a house on the plot for their own occupation on or before January 7, 1952, to a payment from the £300 million fund equal to the development value in the land for the erection of a house.

This should mean, in the absence of any marked change in market values, that the payment from the fund will broadly cover the development charge.

Consideration has since been given to the position of similar owners who bought their plots between January 7, 1947, and July 1, 1948, the appointed day for the coming into force of the Town and Country Planning Act, 1947. The Board has in consequence been authorised to extend the concession to such owners.

The payment from the fund will not be available until after the scheme for payments has been made and approved by Parliament, but these owners will be able to set off their development charge against it. They must, of course, put in a claim for a payment before March 31 next, and the Board advises them to do so as soon as possible. The concession will also apply to persons who were under binding contract to purchase or lease plots on July 1, 1948.

PRESS NOTICE: C.L.B./8
October 7, 1948

Notes.—(1) In order to correct popular misapprehensions a further Press Notice: C.L.B./8A was issued emphasising that the foregoing concession had nothing to do with the time limit for putting in S.1 claims which remains as stated on p. 142, *ante.*

(2) The date by which the owner must start building remains the same, *i.e.,* January 7, 1952.

(3) The existing claim form S.1 was printed before this extension of the concession. Question 20 (c) thereof, as printed, is directed to those who held or were under contract to acquire an interest in land before January 7, 1947, and who still held or were under contract to acquire on July 1, 1948. Those who bought or leased land between those dates or who contracted to acquire an interest in land between those dates should add a note when completing the form giving the date of purchase, lease, contract for sale or agreement for lease so that they may be considered for the concession.

Builders' Near Ripe Land

The Central Land Board announce an amplification of their recent pamphlet on builders' near ripe land S.1.A./N.R. (*ante,* p. 394).

If builders' near ripe land—that is to say, land which a builder has already claimed as his near ripe ration or intends to claim as such in the future—is sold or leased before being developed, near ripe treatment will not be granted if the land is sold coupled with any assignment of the right to the payment due in respect of the land from the £300 million fund. Any land sold on these terms will be excluded from the builder's near ripe ration.

If a builder desires to sell or lease near ripe land before it is developed, the land should be disposed of either at existing use value, or, if immediate development is contemplated and development charge has been determined by the Board on the application of the builder himself, at a price inclusive of development charge.

The intention of the builders' near ripe scheme is not that claims on the £300 million fund should be sold by a builder by an assignment of his rights.

PRESS NOTICE: C.L.B./9.
October 15, 1948.

Correspondence

To the MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Changes in Land Tenure?

Sir,

With reference to the observation in Planning Notes (pp. 448–9) concerning "the (very reasonable) argument" that a basic change in land tenure should have included amending legislation of the 1925 Acts, may I respectfully suggest that the argument is not so very reasonable on two counts. First, the 1925 Acts involved no basic change in land tenure themselves (copyholds were abolished by the 1922 Act), and secondly, express changes would be inconsistent with the history of the land law.

The 1925 Acts were conveyancing Acts and should have been so described. The most vital change made was that in respect of beneficial concurrent interests in land, and that was an accident: see argument in *Re Kempthorne,* [1930] 1 Ch. 268. The most apparently vital change was the conversion of a tenant for life in possession into a trustee of the fee simple, but so far this has been ignored: *Re Fitzwalter,* [1943] Ch. 285. The 1925 Acts did not intend to affect the beneficial use of land more than they could help (apart from succession on death) but merely to change the machinery. The results have not quite worked out that way, but that is because statutes designed for one purpose seem frequently to achieve another.

It is true that 12 Car. 2, c. 24, abolished most forms of tenure, but this was at a time when tenure had ceased to be a reality and become a method of extortion of money. Apart from this Act of 1660 I doubt whether there is any statute which contemplated a "revolution in land tenure", to quote words of the Minister and the Lord Chancellor, who, being lawyers, must be presumed to know what they intended. There are, of course, one or two minor Acts affecting directly individual hardships, such as the Contingent Remainders Act, 1877, but these do not alter the fact that the English way of bringing about fundamental changes in the Land Law since the Statute of *Quia Emptores*, 1290, has been indirect and not direct. We provide machinery and in due season the crop flourishes, even if it is not always the right crop.

All this is not to disagree with your last paragraph. In my opinion the framers of the Act should have provided some appropriate conveyancing machinery to overcome some of the more apparent difficulties of the Act. Their failure to do so is the less understandable because the principal promoters knew that they were promoting a revolution and their advisers had not been left in ignorance that there were conveyancing problems.

Harold Potter.

To the Managing Editor,
Journal of Planning Law.

Existing Use Value and the Central Land Board

Sir,

I hope the views of Mr. Harrison and Mr. Jones as enunciated on pages 495–6 of the October issue of the *Journal of Planning Law* are not typical.

Mr. Harrison refers to "good, well situate building land" and to "good land fit for development" remaining "scarce for some considerable time under existing conditions".

The fact is that apart from ripe building land certified under s. 80 of the Act and land available for rebuilding there is, so far as owners are concerned, no building land.

Land may become building land not at the whim of the owner but on planning permission being granted and development charge paid, and this brings us to Mr. Jones' point that competition for land for development can only be shown by offers in excess of the existing use value.

Take three bidders for one area of land, A, B and C. To all the existing use value must appear to be much about the same, say £100 per acre, but A may put the value as building land at £400 per acre, B at £500 per acre and C at £600 per acre. Presumably, therefore, A contemplates a development charge in the region of £300 per acre, B £400 per acre and C £500 per acre, and none could afford much more than £100 per acre as existing use value. One or the other might feel inclined to go a little further than the others and offer £125 per acre for the existing use value, but it is only possible to go far beyond £100 per acre on the assumption that building controls will be relaxed to allow for development free of price control whilst scarcity prices are still obtainable.

It is, of course, obvious that the owner has little incentive to sell unless he can get a generous existing use value, but if he requires as incentive a very substantial excess the only effective answer is the threat of compulsory acquisition at true existing use value from the owner who is holding back the land or from the purchaser who hopes to get an excessive price back from his customer.

It should also be remembered that if, in the hope of recovering an excessive price from his customer, C is prepared to pay £400 per acre plus an anticipated development charge of £500 per acre, that is evidence of a building value of £900 per acre, so that he could not complain if charged a development charge of £900 per acre less true existing use value £100 per acre = £800 per acre, making the total cost to him £1,200 per acre.

It should be noted that in Sir Malcolm's letter as printed on p. 507, compulsory purchase may be applied where land has been purchased at an excessive price so that C, having purchased at £400 per acre, may have to sell at £100 per acre.

In either case C would lose £300 per acre, and it is just as well it should be accepted that no land has any value to anybody in excess of existing use. Whether it is liked or not, development rights have been taken over by the State. No government, whatever its complexion, can allow owners to raise money on making available the property of the State. If owners do not accept that, there is little doubt that the minimum ultimate solution can only be State acquisition, as a matter of routine, of all land for which development permission has been granted.

W. A. Leach,
F.R.I.C.S.

Kent.

To the Managing Editor,
Journal of Planning Law.

Sir,

It would appear, from the announcement that the Minister of Town and Country Planning has authorised the Central Land Board to exercise to the full extent necessary the powers of the Board to purchase land under s. 43 of the Act [see [1948] J. P. L. 506], that owners will be notified by the Board that if they will not agree to undertake to sell at existing use value the property will be compulsorily acquired.

What is far from clear, however, is whether in the above case the land will definitely go to the purchaser in question. Let us take the case of a prospective purchaser who is most anxious to purchase a particular plot of land. Let us assume that after some negotiations with the proposed vendor, he is unable to obtain a reduction in the inflated price being asked. If he then, before signing the contract, notifies the Central Land Board of the circumstances, can he be definitely assured that the land will ultimately pass to him at existing use value (plus, of course, any development charge which may arise)? If there is any doubt about this, the prospective purchaser will doubtless be tempted to pay extra money to the vendor to ensure getting the land he so particularly desires, and it may prove impracticable for the Central Land Board to implement their policy.

If in fact the Central Land Board do intend that the property in question shall go to the informing purchaser, this might indeed be revolutionary. It is tantamount to saying that once negotiations are opened between a prospective vendor and purchaser the latter is almost in as strong a position as if there were a binding contract already in existence between the parties to sell at existing use value, for the purchaser has only to notify the Central Land Board of the inflated purchase price being asked and the Board will step in and ensure that the land is passed to him at the reduced price.

It will be seen, therefore, that the announcement of the new policy of the Board raises questions of some perplexity not only in the case mentioned above where a matter is still in process of negotiation, but also where a contract has been signed and even where completion has taken place and an inflated price paid over to the vendor.

Further clarification of the intentions and the proposed procedure of the Central Land Board would appear essential before vendors and purchasers can rest assured as to their exact position.

J. F. G. Scarr,
Solicitor.

Lytham St. Annes.

To the Managing Editor,
Journal of Planning Law.

Sir,

In your last number a correspondent touched on the difficulty of competition between prospective purchasers for a piece of land in relation to existing use value.

There is another somewhat similar difficulty. An owner may require land contiguous to his own land for the purpose of expansion of his own superficial area. It may be so required for amenity purposes, extension of buildings or a variety of other purposes.

The adjacent owners may desire to keep their land for their own use, but might be tempted to sell at an extravagant price. How can existing use value enter into the price? The buyer needs adjacent land, no other land is serviceable. It may be quite impossible even were it desirable for him to transplant himself to an area where there is more elbow room, so buy he must, and pay the price his necessities dictate, and development charges, existing use values and all matters akin thereto will neither help him nor deter him.

W. Parkinson Curtis,
Solicitor.

Bournemouth.

Practical Points

12. *Existing use value a minus quantity?*

It seems to us that land fronting an unmade road, where there is a measurable prospect of road making charges being payable, must be worth less than land without this liability. In calculating the " existing use value " in such cases, we have been driven to the conclusion that it must be a minus quantity because of this liability. Do you agree?

A simple illustration is provided by a " building " plot, 50ft. by 200ft., the area being just under a quarter-acre and the " existing use value " £50 per acre, or say, £12 10s. for the plot. If there is a contingent liability for road making of £3 per foot frontage, this liability amounts to a sum considerably in excess of the " existing use value ", even if deferred for some years. Such a plot may therefore vary in value today from £12 10s. to minus £100 according to circumstances. [S. & B.]

ANSWER

Broadly speaking, the answer to this suggestion is to be found in s. 86 of the Act of 1947, which provides that in cases of the kind mentioned development charge shall take into account the payment, or the liability for payment, of, *e.g.*, road making charges.

If " existing use value " is full value less development value and if purchase price, as is clearly the intention, is to be forced down to existing use value by the imminence of the development charge, it seems logical that a reduction of the charge in this type of case to meet the liabilities in question should, in effect, stabilise the existing use value. [S. D.]

13. *Planning permission; development charge.*

I have a wooden garage in my garden which is a structure separate from the house. It is in bad condition and I would like to replace it by a permanent structure. Can I, without obtaining planning permission or attracting a development charge

(a) replace it with a brick-built garage of the same size on the same site;

(b) in lieu thereof have a brick garage built against the wall of my house. [L. F. M.]

ANSWER

The rebuilding of the garage will be a building operation for which planning permission will be necessary. If the rebuilding has been necessitated by war damage it will fall within Class XI of the General Development Order, 1948 (No. 958), subject to any directions in force under art. 4 of the Order. No development charge will be payable as this is an operation within para. 1 of the Third Schedule provided the cubic content of the original building is not exceeded by more than 10 per cent.

It is thought that the Central Land Board would not distinguish between replacement of the garage on its original site and as a lean-to against the house. [W. A. L.]

14. *Claims for loss of development value.*

(1) A owns a block of freehold ground rents. The leases have about thirty to forty years to run. But for the Act he would no doubt have rebuilt on the falling in of the leases at probably increased ground rents. Can and should A lodge a claim against the global fund and if so on what basis?

(2) It may well be that the locality where A's properties are situate will be planned for shops and offices, and but for the Act A would then reconstruct and convert his properties into shops and offices thereby increasing his rent roll and the value of his properties. Can A lodge a claim against such a problematical loss of development rights, and if so, on what basis?

(3) A some years ago bought a piece of land next to his own house at £10 a foot frontage. His idea was to build on the land at some future date but in the meantime he is using it as a kitchen garden. Can he claim against the global fund, and if so, on what basis? [J. F. C.]

ANSWER

(1) A can still rebuild when the leases fall in (Third Schedule, para. 1) *and if the land is worth more for the existing use* he can still take and keep his higher ground rents. Therefore no claim is practicable under Part VI.

(2) If a purchaser in the open market would on July 1, 1948, have paid more for the estate because of the development potentialities specified, a claim could be made under

Part VI of the Act, but it would be useless to claim unless there is reasonable ground for believing that the District Valuer or the Appeals Tribunal could be convinced that the potentialities had a market value as for compulsory purchase at the date specified (s. 62 (1)).

(3) If A has taken the plot into the curtilage of his house he can claim the difference between (a) the value of his house with the kitchen garden attached assuming the land to be restricted to use with the house, and (b) the total value of any land which could be sold off for development, and the residuary land with the house thereon.

If A has not taken the land into the curtilage of the house but has kept it fenced off he can claim the difference between, (a) the value of the plot for its existing use, and (b) the value thereof for development, less (c) any depreciation in the value of his house (s. 61 (6)). Thus if the value in (a) is £100, and in (b) £200, there is prima facie a right of claim to £100, but if as a result of losing the open land on its flank A's house would fetch £100 less the claim would be wiped out. [W. A. L.]

15. *Development charge—change of use.*

The committee of a social club are desirous of acquiring additional premises in the vicinity to provide additional room for expansion and the provision of sleeping quarters for members and the staff. This property was used as a club prior to 1947 but is now being sold as a private dwelling-house. Will a development charge be payable for using the property as club premises once more? [H. R. & R.]

ANSWER

As the property is being offered for sale as a house, apparently that is now, in the opinion of the present owner, the normal use thereof and if the use has not been established in contravention of earlier planning control (s. 75 (9)) it is quite clear that development charge would be assessable on reversion to the use as a club. But the fact that the property changed from club to dwelling in 1947, rather indicates that the value as a dwelling may exceed that as a club. There are probably not a great number of competitors for the premises for use as a club, and the development charge, even if not nil, may not be very great. [W. A. L.]

16. *Sale of " near ripe " land.*

A builder has been in the habit of selling plots to purchasers and at the same time entering into a building agreement with the purchaser. The builder now wishes to carry out the same process on plots over which he has probably a " near ripe " claim. Can he do this without losing the benefit of the " near ripe " claim? [W. H. & G. M. D.]

ANSWER

The intention of the " near ripe " scheme, is to give preferential treatment to builders who hold land as stock in trade rather than as an investment. If the builder sells the land without a building, he is treating it as an investment and would, it is thought, lose the benefit of the " near ripe " scheme. [W. A. L.]

[Ed. Note. See now C.L.B./9, *ante*, p. 562.]

17. *Sale of " dead ripe " land.*

A builder owns plots for which he could probably get a " dead ripe " certificate. His previous planning permission, which has lapsed, was for semi-detached houses on the plots. He now wishes to get a " dead ripe " certificate, and sell the plots at full building plot value. We have considered applying for the revival of town planning permission in respect of the old semi-detached houses. It is probable, however, that purchasers will wish to put up detached houses of their own design. The " dead ripe " certificate will merely allow the building of the old semi-detached houses without development charge. Is this certificate of any value now to prospective purchasers? Will they be able to get the certificate to cover a new town planning permission? If the new permission allows a larger house than the old permission, is it likely that any charge might be made for the difference? [W. H. & G. M. D.]

ANSWER

In this case there has been a planning permission presumably granted in pursuance of an application made within the ten years preceding January 7, 1947. This planning permission is stated to have lapsed and a new application must be made under Part III of the 1947 Act. It will be noted that the development referred to in the old application must have been the same development as that comprised in the new application (note the words "*in relation to that development*" in para. (*b*) of s. 80 (1)).

Reference should also be made to para. (*b*) of s. 80 (2), which reads that "no development charge shall be payable under Part VII of the Act in respect of *that development* if carried out within such period, if any, as may be prescribed by the certificate".

If, therefore, the land is now to be developed in a different way, there would be no advantage in obtaining the certificate under s. 80 as by s. 80 (2) (*a*), the Part VI compensation will definitely be reduced whereas unless the development originally contemplated is carried out, there will be no saving in development charge. [W. A. L.]

18. *Charities.*

What is the position of a charity which purchases land after the appointed day for charitable purposes (*e.g.*, erection of church and Sunday school)?

(1) Is planning permission required?

(2) Is a development charge payable?

S. 85 of the Act which deals with charities appears to apply only when land is held by the charity on the appointed day, and not to cases when the land is purchased *after* the appointed day. [A. & W.]

ANSWER

Unless land held for charitable purposes comes within the ambit of s. 85, it is in no different position from any other land. Therefore, where a charity acquires land after the appointed day the normal requirements as to obtaining planning permission and determination of development charge will be applicable. [W. A. L.]

[Ed. Note. See also Explanatory Pamphlet P.R.4, printed *ante*, p. 541.]

19. *Assignment of claims on the* £300,000,000.

It seems to us that where a vendor, after July 1, 1948, sells at the "pre-Act" price instead of at the "existing use value", then the vendor has not suffered loss of development value and consequently, he would have no right to any compensation from the £300 million fund. This being so, there would appear to be no point in a purchaser who has paid a pre-Act price taking an assignment of the vendor's right to claim compensation from the fund.

Furthermore, we believe we are correct when we say that a purchaser at the pre-Act price would not, as assignee, have any right to claim compensation from the fund by reason of his own expenditure as (a) he was not the "owner" on July 1, 1948; (b) whilst the S.1 claim would bear his name and address as claimant, the remainder of the form must be completed with reference to the facts as at July 1, 1948; and (c) theoretically an assignee has paid "existing use value" and has thus (after payment of development charges) paid the normal pre-Act price for his land.

Your guidance on the above points will be appreciated.

[R. P. & S.].

ANSWER

The short answer to this question is that the Act itself is not directly concerned with arrangements between vendors and purchasers, although as the correspondence between the Minister and the Chairman of the Central Land Board shows, it may be necessary to consider this as a matter of policy.

As from July 1, 1948, all that an owner of land has to sell is the land restricted to the existing use. The development value has been taken away from him and he is entitled to claim compensation. If after July 1, 1948, somebody is prepared to pay him ten times the existing use value, that does not affect the right of claim which has already matured, and the assignment of the claim to the purchaser would therefore have some value.

It should, however, be stressed that the amount of the payment is purely speculative. The Government has said that the fund of £300 millions has been appropriated to provide relief in cases of hardship, and there is little doubt that the total claims finally agreed will very substantially exceed the appropriated fund. A certain number of priorities have already been established, *e.g.*, builders' "near ripe land", and it may well be that the scheme will provide different compensation bases for different classes of property and perhaps different income groups. An assignee of a claim would, of course, have to be satisfied with whatever payment becomes due to the assignor according to his ranking under the scheme which may be nil or a very insignificant composition. The purchaser should acquire at existing use value and leave the vendor his claim. [W. A. L.]

[Ed. Note. See further, Sir Malcolm Eve's statement at p. 522, *ante*.]

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"Planning Law" Notes

This issue of the Journal completes the *Journal of Planning Law* for the year 1948. References to this volume will be, *e.g.*, [1948] J. P. L. 188.

The Editors and Publishers would like to express their sense of gratification at the reception which this Journal has been accorded and of appreciation of the many kind things which subscribers have said of it.

This issue includes a Consolidated Table of Contents, Tables of Statutes and Cases Cited and a new comprehensive Index.

More than half the period allowed for making claims on the global fund of £300,000,000 has now elapsed and owners are again reminded that, in general, claims must be made by March 31, 1949.

Points from an address by Sir Malcolm Eve stressing this and other matters within the sphere of the Central Land Board are printed on p. 603, *post*.

Attention is drawn to the extract from the letter from the Central Land Board to Messrs. Walter H. & G. M. Day, Solicitors, printed on p. 632, *post*, which contains a valuable statement of the attitude adopted by the Board where it is desired to carry out a development other than that covered by a dead ripe certificate given under s. 80 of the Act.

The Managing Editor would be glad to receive from subscribers information of rulings given by the Central Land Board or the Minister in particular cases which are of general interest so that the information may be made generally available.

A comprehensive plan (running into some three-quarter million words) for the future development of the West Midlands has been drawn up by Professor Sir Patrick Abercrombie, M.A., F.R.I.B.A., P.P.T.P.I., and Mr. Herbert Jackson, F.R.I.B.A., A.M.T.P.I., the joint consultants appointed by the Minister of Town and Country Planning after discussion with local authorities. The plan covers the areas of Warwickshire, Worcestershire and South Staffordshire. The plan has been submitted to the local authorities concerned for comment. It will provide local planning authorities with the underlying principles and extensive information to guide them in drawing up the future development plans for their areas.

It was stated on October 22, 1948, that the Minister of Town and Country Planning, Mr. Lewis Silkin, M.P., has written to the Common Council of the City of London, stating that he proposes to make an order declaring about 230 acres of land in the City to be subject to compulsory purchase for the purpose of dealing with war damage. The City Corporation applied to the Minister for an order to be made in respect of 272 acres. The City Corporation will in due course give notice by public advertisement of the place where a map giving details of the Minister's proposed modifications can be inspected.

Dr. Harold Potter contributes the following note: In this concluding issue of the first volume of this Journal it is desired to make one or two remarks concerning the precedents which have been issued. First, it should be said that the precedents are not intended to be complete or exhaustive. It is not easy in the first place to envisage the variety of circumstances that may call for special points in drafting. Neither space nor time permitted of more than a few "common forms" intended primarily as a guide to put practitioners on notice of the kind of provision that may be necessary. It is intended in the future to develop the precedents as experience of the problems develops. Secondly, it must be admitted that the forms are far from ideal in expression. It must be borne in mind that in days past precedents have been hammered out over years of experience. They have represented the fine flower of repeated revision and pruning. It is hoped to supply something more polished in the years to come and it is hoped in the meantime that practitioners may be able to fashion something better from the humble beginnings that have been offered. Thirdly, since all experience is limited we should welcome the opportunity to consider any special forms that practitioners may have found it necessary to draft. Finally, we should like to thank the one or two subscribers who have written to us about the published precedents. We should welcome alike both suggestion and criticism in the future. We feel that we are only at the beginning and that only in the fullness of time can we hope successfully to overcome the problems of a "planned conveyancing".

Mr. Rimmer and Mr. Stuart Daniel contribute the following: In the article which appeared in the November issue entitled "Existing Use Value and the Central Land Board" (*ante*, p. 521), the authors stated: "It is a prerequisite of the particular power conferred by s. 43 (1)" (*i.e.*, the power of the Board to purchase) "that permission shall have been given". It has been suggested that the permission in question need not have been given at the stage of purchase by the Board, but need only be obtained before the Board resell the land for development. The authors, however, adhere to their original view, that is—that the Court would construe the section as meaning that planning permission must have been granted before the Board can acquire.

See further on this subject, the letter which the Board are writing in reply to applications for the exercise of their compulsory powers, p. 605, *post*.

The question has been raised as to the value to be put, on a death, on undeveloped or partly developed land by reason of the Town and Country Planning Act, 1947.

The question has been referred to the Board of Inland Revenue and the following reply made: "The answer is that where in the case of deaths on or after July 1, 1948 (the appointed day under the Town and Country Planning Act, 1947), the provisions of the Act operate so that land is in broad terms restricted to its existing use, the value of such land for the purposes of estate duty should, in order to conform with the "Governing Principle" to which reference is made in the Schedule to the Town and Country Planning (Development Charge) Regulations, 1948, be the fair market value for existing use."

A further inquiry as to the position with regard to deaths since January 7, 1947 (the date on which the Bill was first introduced) or since August 6, 1947 (the date when the Act received the Royal Assent) and before July 1, 1948, was referred to the Board of Inland Revenue and the following reply was received: "The Town and Country Planning Act, 1947, did not amend the statutory provisions which govern the basis of the valuation for estate duty purposes. In estimating the principal value, however, it is necessary to consider whether the deceased's interest was affected by the 1947 Act. If the death occurred on or after August 6, 1947 (the passing of the Act) and before the Appointed Day, the interest passing would not have been subject to the general 'restriction' imposed by the Act."

This Journal does not encourage the submission of verse and publishes the following doggerel from a subscriber with some misgiving:—

It's plain, I believe, that the dictums of Eve,[1]
As expressed down at Brighton,[2] resolve not but heighten
The sweet mystery: whether his C. L. B., under s. 43,
Can acquire, if they choose (to prevent much abuse),
Land, simply and solely, to retard " roley-poley "
And rocketing prices which the Act's nice devices
Were designed for preventing (" for such ", says M. Eve,
" I am led to believe was the Act's true intending ").
Messrs. Daniel and Rimmer [3] cast a ray or a glimmer;
And *they* say with some force : " It's all nonsense ! Of course
The Board cannot do it ! If it does, it will rue it !
Let it stick to its last ! By the Act it was passed
And decreed, by and large, that, to fix its own charge,
To gather the same, to deal with a claim
For ' development dues '—all else—a misuse
Of the power of the Board, we defy House of Lords
Or the Court of Appeal to unsay what we feel
And our arguments flout. No scintilla of doubt
Or misgivings internal, occurred to us when
We took up our pen and wrote, for " the Journal ",

---

[1] Sir Malcolm Trustram Eve, Bt., M.C., T.D., K.C., Chairman of the Central Land Board.

[2] *Ante*, p. 506.

[3] *Ante*, p. 516.

Our view of the law, which we hold without flaw,
And indeed do aver and in fact will not stir
From the theme of our song! It's outrageous! It's wrong!
(A departure from "functions", the Act's strict injunctions!)
That the Board can and will, in its efforts to kill
Speculation in land—take into its hand
This power so surprising (M. of P. authorising)
By compulsion acquiring *any* land it desiring
At "existing use" level! It smacks of the Devil!
It's plain misconcEVEing and we don't believe in
What has been propounded—it leaves us dumbfounded!
It's no true construction, by whatever deduction,
Of just what the fact is and the Act, it enacts, is"

I can go on like this
In manner well-bred
For page after page
Not so. *Man. Ed.*

L. P. N.

Single Plot Owners—Procedure

In the statement of the "drill" for single plot owners printed at p. 542, *ante*, for paragraph 2, substitute :—

2. Apply for planning permission if necessary. If planning permission was granted before July 1, 1948, it may have lapsed and may require to be renewed : see *ante*, p. 69.

The Defect in Section 23

Further Observations

By DESMOND HEAP, LL.M., L.M.T.P.I.

Comptroller and City Solicitor to the Corporation of London

1. In the November issue of this Journal attention was drawn at pp. 535 *et seq.* to what was there termed the defect in s. 23 of the Town and Country Planning Act, 1947, in so far as that section relates to the service of enforcement notices consequent upon a breach of conditions subject to which planning permission has been granted for development after July 1, 1948.

2. Two suggestions have been made for alternative interpretations of s. 23 so as to remove the alleged defect. As the writer ventures respectfully to disagree with these suggestions there is set out below—for the matter is of importance from the point of view not only of developers but also of those who have to administer the Act—both the suggestions together with the writer's replies thereto.

3. A third suggestion relating to the possibility of development being carried out before a temporary planning permission is granted, with the result that the four-year period will commence to run before the date of the local planning authority's decision, has also been made. This, too, is set out below with the writer's observations thereon.

4. *The first suggestion is as follows:—*

The use in s. 23 (1) of the word " such " in the phrase " the local planning authority may within four years of such development being carried out " indicates that the local planning authority may serve an enforcement notice within four years of the development which has been described earlier in the subsection. That type of development is, put shortly, contravening development and the local planning authority can, therefore, serve an enforcement notice within four years of the contravening development. As the development does not become contravening development until the end of the period set by the temporary planning permission, the four-year period does not begin to run until the contravention takes place.

5. *The reply to the first suggestion.*

This suggestion, it is submitted, sets out exactly what s. 23 (1) should have enacted but did not, and in support of this submission the following arguments are adduced :—

(1) The four-year period for the serving of an enforcement notice should (if there be a need for a period of limitation at all) clearly have been made to run from the date when contravention occurs or, better still (at least from the local planning authority's administrative point of view), from the date when the contravention first comes to the notice of the local planning authority.[1]

(2) This suggestion fails to give proper weight to the words in s. 23 (1) " being carried out ". The only development which is " carried out " is the development in respect of which planning permission subject to conditions has been granted. It is admitted that the development, having been carried out, does not become contravening development until a later date when the planning conditions are broken. Breach of the conditions brings about *a change in the status* of the development—that which was formerly conforming development becoming contravening development. Such a change of status, however, has nothing to do with the *carrying out* of the development. On the contrary, the development was " carried out " at some earlier date and when it was so carried out it was carried out *once and for all* and the four-year period of limitation immediately began to run against the local planning authority because the service of any subsequent enforcement notice (it is to be emphasised) is related not to the date when the already-completed development (or, in other words, the *already-carried-out* development) changes its status and transforms itself from conforming into contravening development, but to the date when such development (irrespective of its status) was *carried out*. In short, the carrying out of the development and the later change in status of the development must not be confused, and it is to the

---

[1] It is significant that the Town and Country Planning (Scotland) Act, 1947, makes wiser provision in s. 21 (1) relating to enforcement of planning control by enacting that an enforcement notice may be served *within two years after it has come to the knowledge of tho local planning authority* that a breach of conditions has occurred. And the Town and Country Planning (Minerals) Regulations, 1948 (No. 1521), provide (reg. 3 (3)) that an enforcement notice in connection with the working of minerals in breach of any condition subject to which planning permission for such working (*i.e.*, such development) was granted, may be served under s. 23 of the English Act at any time within four years *after the breach has come to the knowledge of the local planning authority.*

carrying out of the development that attention must be paid when calculating the four-year period, the change in status being relevant only when consideration is being given to the question of whether the right to serve an enforcement notice has or has not arisen.

(3) It follows from the foregoing (and this puts the flaw in s. 23 (1) in a nutshell) that a local planning authority may lose (by the four-year period of limitation) the *power* of serving an enforcement notice before the *right* to serve the notice accrues.

6. *The second suggestion is as follows:—*

Nobody questions that the erection of a building is a building operation, but the demolition of a building is also an operation. Therefore a limited period permission to erect a building is in fact a permission (a) to erect a building, and (b) to demolish it, subject to a condition that (b) shall be carried out by a specified date. If (b) is not carried out by the specified date it is obviously not a completed operation and there is accordingly no reason why an enforcement notice should not be served under s. 23. The demolition is an operation and an operation cannot be carried out without planning consent. The consent is the limited period permission and until the demolition has been carried out it is not a completed operation. It cannot therefore be seen why an enforcement notice should not be served at any time within four years of the limited period.

7. *The reply to the second suggestion.*

This suggestion is based on a fundamental misconception by reason of its assumption that the demolition of a building constitutes *in itself* development which requires planning permission. It is submitted that this is not so and the following arguments are made in support of this submission :—

(1) Development means (s. 12 (2)) " building, engineering, mining or other operations ". The expression " other operations " must be construed *ejusden generis* with building, engineering or mining and the demolition of a building (if it is any one of these operations at all) is a building operation. This leads to a consideration of the definition of " building operations ".

(2) " ' Building operations ' includes rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder " (s. 119 (1)). The " other operations "

here mentioned as being normally undertaken by a builder must, of course, be operations normally undertaken by a builder *in his capacity as such*, and it is difficult to conceive, apart from the building and rebuilding of buildings (including, by virtue of the definition of " building " in s. 119 (1), structures or erections) and the making of structural alterations of, or additions to, buildings, what other operations a builder *in his capacity as a builder* normally undertakes. It is submitted that the total and complete demolition of a building cannot *of itself* be any of the operations mentioned in s. 12 (2) and it is to be remembered that, in considering the effect of s. 23 on temporary planning permissions, it is only demolition, *total and complete*, which is under consideration. It is admitted that the demolition of a building coupled with rebuilding (as it usually is) will comprise a combined operation which constitutes development requiring planning permission, but it is the rebuilding and not the demolition part of the operation which brings the operation within the definition of development and thereby attracts the need for planning permission.

It is expressly enacted by s. 18 (5) that such permission is not required for the exemption at the end of any temporary permission, of the use of land for the purpose for which it was normally used before the temporary permission was granted provided such earlier use was in accordance with previous planning control.

(3) If demolition alone were to constitute development there would have been no further need for s. 17 of the 1932 Act after the control of interim development became enforceable on October 22, 1943, under the Town and Country Planning (Interim Development) Act, 1943, and there would today be no need for s. 29 of the 1947 Act in so far as it is employed for the purpose of prohibiting the demolition (as distinct from the alteration) of a building.

(4) It is significant that " Builders and Demolition Contractors " is an expression in common trade usage, for building and demolition are inherently antithetical and, as operations, are mutually exclusive. If this is not so and the mere demolition of a building is sufficient in itself to constitute development, then if a man demolishes his house (which, it may be assumed, has neither architectural nor historic significance) without planning permission it would be open to the local planning authority to serve an enforcement notice requiring the total replacement of the house. One could not but wonder at the hardihood of any local planning authority

which served such a notice and pray for the strengthening of their arm when they came to defend their notice in Court at the hearing of the appeal which would undoubtedly be lodged against it!

(5) A temporary planning permission or, to quote ss. 119 (1) and 14 (2) of the Act, a " permission granted for a limited period only ", is a planning permission which under the 1947 Act *must* carry a condition, the condition being one " requiring the removal of any buildings . . . authorised by the permission " (s. 14 (2) (*b*)). Now a planning permission is a permission given for the carrying out of development which, however, may or may not be carried out at all depending on the volition of the applicant for permission. It is not a permission given for the *obligatory* carrying out of conditions which are appendant to a planning permission authorising antecedent development. In other words, in the case now under consideration, the demolition of the temporary building is made a condition of the planning permission which authorises its erection, but such demolition is not itself the subject of planning permission at all. Thus, it is the erection of the building which constitutes the only development which (for purposes of the Act) ever occurs, and once the temporary building has been erected the development has been " carried out " and the four-year period begins to run.

(6) A planning permission is an enabling matter only—it is not mandatory. Accordingly, the demolition of buildings after a limited period can be secured (apart, of course, from s. 26 of the Act which leads to a liability for compensation under s. 27) only by making it a condition of their erection that they shall be demolished on a given date. Such a condition can only be attached to a grant of permission for development, and in the present case the development to which the condition is appendant is the erection of the buildings and not their demolition. Such demolition forms the subject-matter of the appendant condition—it cannot at the same time itself constitute development and planning permission in respect of it, accordingly, cannot arise. In short, the only *development* covered by the planning permission is the erection of the buildings, and when this operation is completed the planning permission becomes spent, the development becomes " carried out " and the four-year period at once begins to run.

8. *The third suggestion is as follows:—*

It might be dangerous for a local planning authority to follow the advice on p. 537 *ante*, and grant a temporary permission for three years and eleven months from the date of the local planning authority's decision, relying on the proposition that " temporary development cannot legally be carried out before the authority's decision is given ", because if the developer could successfully anticipate the local planning authority's decision by more than a month he would have a sporting chance of being able to keep his building permanently, for at the expiry of the three years and eleven months' temporary planning permission his building would already be over four years old.

9. *The reply to the third suggestion.*

If development has in fact been carried out before the local planning authority has granted planning permission to carry it out *in futuro*, such a planning permission will be of no effect (for it is submitted it could not be made to operate retroactively) and the development in question would continue to be development carried out without planning permission. Accordingly, an enforcement notice could be served in respect of it *at once* and *the grant of the abortive temporary planning permission would not in any way prejudice the service of such a notice.* Thus a local planning authority when granting a temporary permission might with advantage ascertain whether or not the development has or has not already been carried out so as to be certain whether the four-year period has not thereby already begun to run. If the development has already been carried out then the application for permission may be treated as one for *retention* of development (s. 18 (1)) and the period of the temporary planning permission should be reduced to a period of three years and eleven months from the date when the development was completed (*i.e.*) carried out. Alternatively, if temporary planning permission is granted in the form of a permission for development *in futuro* (s. 14 (1)) and not in the form of a permission for the retention of development already carried out (s. 18 (1)), it should be ascertained *as soon as possible* thereafter whether in fact the development has already been carried out and if it has enforcement action should be taken within four years of such carrying out, the grant of temporary planning permission being in the circumstances a nullity and certainly no bar to enforcement proceedings during the period of the purported grant of temporary planning permission.

Compensation at "Existing Use Value"

BY T. A. BLANCO WHITE, Barrister-at-Law

I. Existing Use Value and Current Market Prices

It is sometimes said that if land is now compulsorily acquired (by the Central Land Board, for instance) the acquiring authority will have to pay current market prices—"inflated" or not. It is possible that this is correct, but it is unlikely: the better opinion is that in many cases, the compulsory purchase price will be well below the current market price. The purpose of this note is to explain why.

In the ordinary way, of course, the price realised on recent open market sales is almost conclusive of the value of land of a given character, for compulsory purchase purposes especially. The effect of the Town and Country Planning Act, 1947, is, however, that this will no longer be so where the land concerned is likely to be developed in the near future.

For the present purpose, the important provision of the 1947 Act is s. 51 (2). Under this subsection, it must be assumed when assessing compensation that permission will not be granted for any development (other than "Third Schedule" development) on the land concerned. Under s. 51 (4), this is so even where permission for development has already been granted—unless any development charge attracted by it has been paid.

Now in practice, when development of land is contemplated, this is bound to affect the open-market price of the land: for the price that a purchaser will actually pay is bound to reflect the chance that the development will be permitted, will be carried out, and will prove profitable. At the present moment this discrepancy between the price of land for development and of land not for development is notoriously large, partly because of ignorance of the new Act and lack of confidence in its working. Even when the 1947 Act has begun to work steadily, however, and buyers and sellers of land have come to take it for granted, this discrepancy will still exist: for development always tends to be somewhat speculative in character, and this element of speculation must mean that there is a little extra money around, not all of which will find its way into the hands of the Central Land Board. We must expect it to be a permanent feature of the system that land intended for development will always tend to be sold at a price slightly above the value it would have if it were clear that development would never be allowed upon it.

Under s. 51 (2), however, it is precisely this hypothetical value-if-there-were-no-chance-of-development that is the value for purposes of compulsory acquisition. We must consequently expect it to be a permanent feature of the new system that the compulsory purchase price of land intended for development will be to a greater or lesser extent below its price in the open market.

II. Compensation After Development

As a general rule, once development has lawfully been carried out on land, the increased value due to it is reflected in the compulsory purchase price. It is, however, sometimes argued—see, for instance, p. 422, *ante*—that there is an exception, unintentional no doubt, in the case of developments which for financial reasons did not attract any charge. The typical case would be development that cost as much as the increase produced by it in the value of the land. The better opinion is, however, that these cases form no exception, and that here also the increase in value of the land can be recovered on compulsory purchase.

The argument the other way runs roughly as follows. Under s. 51 (4) of the 1947 Act, where planning permission for a development has been granted but no development charge has actually been paid, then in assessing the compulsory purchase price that planning permission must be deemed not to have been granted. But in that case (so the argument runs) if the development concerned has actually been carried out, it is deemed to have been carried out without permission; and if carried out without permission, it was an illegal development; and by s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, no increase of value due to an illegal development can be taken into account in assessing the compulsory purchase price.

This argument is logical; and it is always possible that any logical argument will be accepted by the Courts. But the better view is that this is carrying logic too far: if Parliament had meant perfectly legal developments to be deemed to be illegal, it would have said so. It would certainly be wrong for the advisers of the landowner concerned to accept an argument of this sort as a basis for cutting down the amount of compensation.

Planning Control in Relation to Registered Property

By THEODORE B. F. RUOFF, a Solicitor of the Supreme Court

(Continued from p. 390, *ante*)

OVERRIDING INTERESTS

5. Although the rights and powers of planning authorities arising under the Town and Country Planning Act, 1947, are not strictly matters of title,[1] some of them are overriding interests under the Land Registration Act, 1925. It may be useful to recall that these interests—

(i) Are incumbrances, rights, interests and powers to which all registered land is deemed to be subject unless the register states that the land is free from them (ss. 70 (1) and 3 (xvi) of the 1925 Act);

(ii) Are not treated as incumbrances though registered dispositions take subject to them (*ibid.*);

(iii) Do not exist outside those listed in s. 70 (*ibid.*), except for minor additions made by statute;

(iv) Are equally well known (but not by that name) in unregistered conveyancing and, for the most part, are not disclosed in title deeds;

(v) May, at the Registrar's discretion, if consisting of an adverse " easement, right, privilege or benefit " created by an instrument, be noted on the register on first registration (s. 70 (2) and r. 41 of the Land Registration Rules, 1925). " Instrument " does not include a statute (s. 3 (vii));

(vi) May, at his discretion, be noted at any time if proved or admitted (s. 70 (3));

(vii) Will not be noted if trivial, obvious, or likely to cause confusion or inconvenience (r. 199, and *vide* r. 78);

(viii) Are not usually so protected and often, by their very nature, cannot be.

6. All overriding interests that arise under the Act of 1947 must be one of the following kinds :—

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[1] Note by Managing Editor: Whether " existing use " is a matter of title is a matter on which conveyancers are not in agreement. Dr. Potter's affirmative view is stated at pp. 108, 273–4, *ante*.

(1) Public rights (s. 70 (1) (*a*) of the Land Registration Act, 1925).

(2) The rights of every person in actual occupation of the land or in receipt of the rents and profits thereof, save where inquiry is made of such person and the rights are not disclosed (*ibid.*, s. 70 (1) (*g*)).

(3) Rights under local land charges unless and until registered or protected on the register in the prescribed manner (*ibid.*, s. 70 (1) (i)).

(i) *Public Rights*

7. The framers of the Land Registration Act, 1925, cannot have contemplated modern planning control and the term "public rights" probably referred to such comparatively unimportant rights as that of the public to use highways. It is possible—but uncertain—that it also embraces the liability of all land to be compulsorily requisitioned or compulsorily acquired. The mere existence of the former right (and, presumably, the latter also), being applicable to all land, cannot, in the absence of specific statutory requirement, be protected as a land charge against an unregistered owner, nor, *semble*, do such rights require to be protected when exercised in respect of particular land because one expects to find rights, rather than the fact of their exercise, in the register of land charges (*Lewisham Borough Council* v. *Maloney*, [1947] 2 All E. R. 36). Similarly, such rights will not be found on a registered title.

Again, any limitations imposed by the development plan (ss. 5, 6 and 10 of the 1947 Act) may be a "public right", or may be a local land charge (*vide infra*). When such a plan is available anyone may possess a copy (s. 10 (2) (*c*)), and it is confidently expected that identification of registered land on the maps it contains will be an easy matter—far simpler, in fact, than will sometimes be the case with unregistered property, especially when the title deeds contain only crude plans. It is noteworthy that some of the more important maps comprised in a development plan will have a scale (1/2500) that is commonly used for the plans of land and charge certificates (Town and Country Planning (Development Plans) Regulations, 1948 (No. 1767), p. 403, *ante*).

8. It is also conceivable—but uncertain—that the power of the State, acting by planning authorities, to control the user and development of all land in general is a "public right". If this is so, the power to limit the use of Blackacre, in

particular, to that existing and permitted on July 1, 1948 (*vide* ss. 12 and 75 of the 1947 Act), or authorised modifications of it (*ibid.*, s. 14) may also be a public right. But even if these speculations are correct, it can be said with assurance that the " existing use " will never be shown on the register because it is not created by an instrument and it cannot normally be proved or admitted beyond a shadow of doubt. If, as seems to be the case, a purchaser's solicitor who makes intimate and searching inquiries into the question is prone to doubt the correctness of the information tendered to him, it is certain that the Chief Land Registrar, who has complete discretion, would not make any entry which, if proved to be inaccurate, might place the indemnity fund in jeopardy. Further, because the use may change in character (*e.g.*, when permission to develop is given (s. 14 of the 1947 Act), or an enforcement notice requires restoration of the use in *statu quo ante* (ss. 23, 24), or an order for discontinuance or alteration of the use is made (ss. 26, 27)), its uncertainty would unquestionably prevent the Registrar from making any entry, even assuming he had authority to do so.

Probably, the better view is that the maxim *ignorantia juris neminem excusat* applies to the law governing potential rights of this kind and, hence, that they lie outside the scope of registration and cannot be protected on the register in any way. When exercised they can only be discovered by inquiry of the disponor or the local authority.

(ii) *Owner's and Occupier's Rights*

9. It is possible—but unlikely—that these include the right of the occupier (as against the owner and the State) or the owner (as against the occupier and the State) to enjoy land in accordance with the permitted use existing on July 1, 1948 (see ss. 12 and 75 of the 1947 Act), or subsequently. This is an adverse right in the sense that the land cannot be used for fresh purposes or developed without penalty of one kind or another. However, it is clear that for reasons already given, even if the permitted use for the time being is an overriding interest, it will not be protected on the register. Thus an intending purchaser, lessee or mortgagee of registered land must ascertain the " existing use " by inspection of the property, and by inquiry of the owner, the occupier, the local authority and the local planning authority. He must then judge whether it and the permitted use coincide in the same way as in relation to unregistered property. If, after

completion, replies to inquiries and requisitions are filed with the land certificate and handed over on each successive sale, they may provide valuable evidence of the material facts in the future.

(iii) *Local Land Charges*

10. By virtue of the Town and Country Planning Acts, 1944 and 1947 (Registration of Orders and Lists of Buildings) Rules, 1948 (No. 1213), *ante*, p. 242, and the Local Land Charges (Amendment) Rules, 1948 (No. 1283), *ante*, p. 313, local land charges arising under the Act of 1947 are registrable in respect of:—

(a) Compulsory purchase orders containing a direction (s. 39).
(b) Lists of buildings of special interest (s. 30).
(c) Enforcement notices in respect of unauthorised development (s. 23).
(d) Notices where the provisions applicable to buildings in (b), *supra*, have been contravened (s. 30 (8)).
(e) Notices to abate an injury to the amenity of open land, etc. (s. 33).
(f) Orders revoking and modifying development permission (s. 21).
(g) Orders for discontinuance of use (s. 26).
(h) Tree (s. 28) and building (s. 29) preservation orders.
(i) Other "planning charges" (defined, Local Land Charges Rules, 1934, r. 2 (1), as amended).

11. The authors of the 1947 Act did not address their minds to the conveyancing aspect of their work, with the result that there are many deficiencies. For example, items (c), (d) and (e) are not normally registrable for twenty-eight days after service, nor items (f), (g) and (h), until confirmed by the Minister. Yet the hazard to a purchaser would be lessened, and the task of his solicitor lightened, if it were certain that provisional registration would be made. The official view, as elicited in the House of Commons (*Hansard*, May 31, 1948, *ante*, p. 246), appears to be that a purchaser is sufficiently protected if he makes inquiries of the local authority, but the Lord Chancellor is further considering this point with the Law Society. The responsible officers of local authorities obligingly answer most of the supplementary inquiries that are customarily made at the time of a search although they are in no sense compelled to do so. The questions asked are of ever increasing importance and the time is ripe for the strongest protest to be

made against the state of the law under which certain local authorities, after weeks of delay, may give no more than equivocal answers to some requisitions whilst declaring that they do not hold themselves responsible for their replies. If the Land Registry can, by return of post, guarantee the correctness of its official searches of the register of title under cover of an indemnity, it should be made possible for local authorities to give plain, correct and speedy information about facts that, for the most part, are within their sole knowledge.

12. It will be observed that there is no *express* provision for registration of such matters as a compulsory purchase order under s. 38 of the 1947 Act, or an agreement regulating development and use under s. 25, or a designation for compulsory acquisition (s. 5 (2) (*c*)), or even a development plan (s. 5) with proposals for a plan (s. 10) and amendments to it (s. 6). These are matters of prime importance because, whereas a purchaser of registered land is fixed with notice of a matter that is registrable, and registered in the local registry (*Re Forsey & Hollebone's Contract*, [1927] 2 Ch. 379) he is not bound by it if it is not so registered (Land Charges Act, 1925, s. 15 (1)). It is not unlikely that all of these will, in fact, be entered on the local register, but that is not the point. How can a purchaser judge whether a matter is void against him on account of non-registration if he has no certain means of knowing whether it should be registered? It must be conceded, however, that he could scarcely be heard to complain that he was ignorant of the contents of a development plan (*vide*, s. 10 (2) (*c*) of the 1947 Act).

13. When the Central Land Board by order determines a development charge for unauthorised development (s. 74), it is, for an abstruse reason, registrable as a Class A land charge at the Land Charges Department. No purpose will be served, however, by registering it as such if the whole of the land affected is registered property for it would not thereby become binding upon a purchaser (Land Charges Act, 1925, s. 23 (1); Land Registration Act, s. 59 (2)). It can and, indeed, if it is not to be overridden, must be protected on the registered title. This might be done by notice under s. 49 (1) (*c*) of the Land Registration Act, 1925, or by caution under s. 54 thereof, but since, before the Board can realise the charge, it must be registered as a charge under s. 26 of the Act (s. 59 (2), proviso), it is possible that this course will immediately be taken in normal circumstances.

14. A development charge for authorised development under

s. 69 of the 1947 Act can scarcely be regarded as a "charge" in the usual conveyancing sense of that word. It might more intelligibly have been called a development fee. The question of registering a development charge will not usually arise since the practice of the Central Land Board is to require payment in full before development commences and, where payment is deferred the security required will normally be some form of security other than a charge on the land (*ante*, p. 123). However, the Board may require the applicant to give security (s. 71 (2)), and if a legal charge on registered land is executed for the purpose, that may be registered under s. 26 of the Land Registration Act.

15. Development orders, either general or special, are laid before Parliament (s. 13), and so, like regulations touching advertisements (s. 31) are a matter of legal knowledge and do not require registration. Permissions to develop (ss. 14, 18) are separately recorded and, presumably, are not local land charges.

REGISTERED CONVEYANCING PRACTICE

We are now in a position to review briefly the practice of registered conveyancing as influenced by the Act of 1947.

(i) *Inquiries and Searches Before Contract*

16. For all practical purposes, registered and unregistered property are on the same footing and all that has been said as to searches preliminary to contract (*ante*, p. 107) and the inquiries that have been formulated (*ante*, p. 58) are applicable here. For the sole purpose of underlining a pre-eminently important question, attention is again invited to the complementary functions of surveyor and solicitor in ascertaining as exactly as possible the use and state of development of the land and that these are authorised (*vide*, pp. 101–103, *ante*). The matters that are, or may be, registrable as local land charges have already been mentioned above.

(ii) *The Contract*

17. S. 110 of the Land Registration Act, 1925, requires a vendor (usually at his own expense) to furnish his purchaser with, *inter alia*, the following:—

(i) Copies or abstracts of documents noted on the register that affect the land sold, unless they consist of charges and incumbrances that will be discharged or overridden at or before completion: this he must do notwithstanding any special stipulation.

(ii) Copies or abstracts and any available evidence of all matters excepted from the effect of registration as the purchaser would have been entitled to if the title had not been registered, provided there is no agreement to the contrary.

18. Item (i) will include anything arising under the Act of 1947 that has been protected on the register and item (ii) covers overriding interests. There must, therefore, be full disclosure of these matters which, it is to be observed, cover all local land charges whether protected in the local register or upon the register of title. Further, if (as is by no means certain) the right of the State to confine the use of Blackacre to the existing use or authorised extensions of it is a public right, item (ii) may throw on a vendor the obligation to inform his purchaser of the permitted, if not the actual, user. The disclosure normally required to be made by a vendor is thus very wide in its scope. However, the rights of planning authorities under the 1947 Act that do not require registration as local land charges (as, for example, the general right to control user), are not matters of title although they certainly relate to the quality of enjoyment of the land.

19. A mistake as to quality is governed by the rule *caveat emptor* unless the contract makes some representation about it (*Edwards-Wood* v. *Majoribanks* (1860), H. L. C. 806), and there is no implied warranty that the land is fit for the purpose for which it was acquired (*Sutton* v. *Temple* (1843), 12 M. & W. 52; *Hart* v. *Windsor* (1843), 12 M. & W. 68; *Cheater* v. *Cater*, [1917] 1 K. B. 247 (C. A.); *Cruse* v. *Mount*, [1933] Ch. 278). But it is possible that specific performance will not be decreed where there has been an express warranty and the property obtained is substantially different from that sold (*Charles Hunt* v. *Palmer*, [1931] 2 Ch. 287). It may even be possible for the purchaser to avoid the contract (*Flight* v. *Booth* (1834), 1 Bing. N. C. 370). Some of these decisions, it is true, relate to lettings and not sales and it is a far cry from them to the modern Act. Nevertheless, it is thought that (with one possible exception) a purchaser can discover everything arising under the 1947 Act about which he ought to know by searches and inquiries of the local planning authority and the vendor. The possible exception may be a crucial one. Even the vendor himself, who will presumably co-operate to the extent of his knowledge, may not invariably possess correct and adequate information about use and development.

Therefore it is suggested that the purchaser should *ex abundante cautela* attempt to obtain an express statement in his contract that the property is sold for a stated use which was permitted and validly exercised on July 1, 1948 : see particularly clauses 1, 4 and 5 of the clauses for insertion in contracts, pp. 116 *et seq.*, *ante*. It is, however, possible that if, at the date of the contract, the land is being used for an unauthorised purpose, knowledge of that fact will be imputed to the vendor. At the moment it would be a hardship to impute it to the purchaser unless, *e.g.*, recent development or a radical change in user is apparent from inspection and he does not bother to inquire into it. Normally the purchaser takes benefits accruing to, and losses and burdens suffered by, the property between the dates of contract and completion, so that, perhaps, he cannot be heard to complain if, *e.g.*, there is a designation for compulsory purchase in this interval.

(iii) *Searches and Requisitions Before Completion*

20. It may be prudent to repeat the searches and requisitions addressed to the local planning authorities in case there has been some material change. The vendor should be asked to confirm that his replies to the pre-contract inquiries remain correct. The usual Land Registry official search must, of course, be made but it is unlikely that this will reveal anything unknown to the purchaser.

(iv) *The Form of the Transfer*

21. The view that the 1947 Act so revolutionises dealings with land that entirely new conveyancing forms are now required has been consistently and unmistakably put forward in this *Journal* (*vide*, in particular, pp. 273 *et seq.*, *ante*). If this opinion—with which, with due deference to the learned authors who have preceded him, the present writer cannot agree—is a correct one, it is arguable that what's sauce to the unregistered goose is sauce to the registered gander. In other words, some practitioners may feel constrained to add provisions to the usual simple form of transfer. Dealings with registered property may only be effected by the use of the prescribed statutory forms, where these are applicable or adaptable, subject to such necessary alterations or additions to them as the Chief Land Registrar may allow (Land Registration Rules, 1925, r. 74). In practice, he permits considerable latitude, but he can refuse to register an instrument that is improper in form or substance, or refers only to matters that

are not the subject of registration under the Land Registration Acts (r. 78).

22. In this regard it is apparent that the sole object of a registered transfer is to convey a registered estate (r. 98 and form 19 in the Schedule to the Rules) and in this sense additional provisions of the kind in contemplation are redundant to the purpose of the deed. No matter what the nature or quality of the interest the purchaser now buys under the 1947 Act may be, so far as the register is concerned he can acquire, and acquire only, the registered estate. It is, of course, not only possible, but common, particularly in a transfer of part of the land comprised in a title, to find easements granted and reserved, and restrictive covenants imposed. When this happens the transfer will often be referred to on the register. But where the whole of the land is being bought *intactus*, and even where a mere equity of redemption is purchased, it is not necessary to transfer the land expressly subject to these burdens or to the charge, although indemnity covenants relating to them may be, and frequently are, properly added. In simple cases of this kind the transfer is not referred to on the register.

Now, although the Chief Land Registrar may well regard special provisions in a transfer that relate to the 1947 Act as excrescences, it is unlikely that he will refuse to register an instrument merely on account of their inclusion. What purpose, then, is served by incorporating them? It seems clear that the Land Registration Act, 1925, and the Rules thereunder (which embody the guiding principles for the Registrar's conduct) contain nothing that authorises him to enter on the register references to additional provisions similar to those contained in the suggested conveyance (p. 281, *ante*). Therefore, these matters cannot be registered or noted because the Registrar can only do that which he has authority to do. Also, immediately it is completed by registration, the original transfer will cease to be a link in the transferee's title and will be filed (r. 90). Furthermore—and this is the point of what may have seemed a digression earlier—in the ordinary way the deed will never again see the light of day unless, indeed, it is referred to on the register. Such is the combined effect of s. 112 of the Land Registration Act, 1925 (under which inspection of documents is subject to regulations and exceptions fixed by general rules), and rule 287 (under which, broadly speaking, a document may be inspected only if it is referred to on the register) and rule 296 (under which an office copy of a document may only be demanded as of right by an applicant who is entitled to inspect it). It seems, therefore, that the use of extraordinary clauses in a registered transfer may be unavailing.

23. If and so far as this is true, a purchaser's chief misgiving may be whether the present use and state of development of the land are authorised. It is to be hoped that in this regard he will have covered himself in the contract. If he has, it seems that a warranty of quality therein that is collateral to proof of title may remain enforceable after completion of the transaction: *De Lassalle* v. *Guildford*, [1901] 2 K. B. 215, C. A., although in *Heilbut Symons & Co.* v. *Buckleton*, [1913] A. C. 30, it was said that that decision could not be supported. It may be necessary to consider whether statements made are mere inducements to the contract and no part of it or whether they amount to a warranty or a collateral agreement (*Gilchester Properties, Ltd.* v. *Gomm*, [1948] 1 All E. R. 493).

(v) *Charges and Leases*

24. This article has been confined to transfers on sale. By way of postscript it may, however, be noted that a legal charge may be in any form provided the registered land is easily identifiable (preferably by reference to the title number) and the deed does not otherwise offend the provisions of s. 25 of the Land Registration Act, 1925. There is no restriction upon the form of a disposition by way of lease provided the lessor's title number is included in the description of the land and, if need be, it contains a plan (*ibid.*, s. 18 (1) (*e*); Land Registration Rules, 1925, r. 113 (1)). Again, if these deeds contain special clauses by reason of the 1947 Act, no entry thereof on the register is possible.

Central Land Board Practice

The following points are taken from an address by the Chairman of the Central Land Board, Sir Malcolm Trustram Eve, K.C., at a meeting arranged by the Town and Country Planning Association at the Central Hall, Westminster on November 15, 1948.

Claims on the Global Fund

It was emphasised that there remained only four and a-half months before March 31, 1949, by which all claims on the global fund of £300,000,000, must ordinarily be made. To date only 12,000 claims had been made for the whole of Great Britain.

Ownership Qualification

Only persons having a freehold or leasehold interest in land on July 1, 1948, are entitled to claim.

Preferred Claimants

Builders with near ripe land and owners of single plots can only have the development charge set off against the claim on the global fund if they have made a claim on the global fund in due time.

Assignments

There is nothing illegal about assigning a claim on a particular piece of land. There will be cases in which it is perfectly proper to assign, for example, within a family and in company reconstruction and so on. In the view of the Central Land Board it is generally unfair to purchasers, and therefore wrong, that claims should be hawked about as part of the selling price of land for three reasons: (a) there is no sort of guarantee what payment will be made; (b) there is a guarantee that some people will get 100 per cent. and that some people will not; (c) in any case a claim will be related to the circumstances of the owner on July 1, 1948, and not to those of the buyer.

Small Claims

It has been said that anyone who owns a house to which a couple of rooms could possibly in the future be added ought to claim. Suppose a house and garden to be worth £2,000, then—

(a) there will be no claim in respect of extensions falling within the 10 per cent. or 1,750 cubic feet allowed by the Third Schedule,

(b) possible extensions must be sufficiently probable to be reflected in the sale price of the house, and

(c) if the property is worth £2,000, a claim does not lie unless it amounts to at least £200 (one-tenth of £2,000).

Time Limit

If the time limit for making claims were to be extended, the date of payment would have to be postponed.

S. 1 Forms

The S. 1 form is as short and simple as it can be made. It is in the claimant's interest to answer all the questions.

Development Charges

Applications and Determinations

Some 30,700 applications have been made for determination of development charges. Of these, 7,861 or twenty-six per cent. have been found to be exempt. In 1,871 cases the charge has been assessed as nil, *i.e.*, the development contemplated, though not exempt, showed no increase of value due to the particular planning permission.

Some 5,000 premature applications have been received. It is possible that some people are asking the Board to say what is the development value of their property in order to have the benefit of the Board's figure when filling in the claim form.

The amount which has been collected in development charges is £132,932 from 1,453 persons. Over £5,000 have been paid back to owners of single plots who paid development charges before the concession in their favour was announced.

All ordinary cases have been disposed of within one month of receiving a properly completed application for determination.

Sales at Existing Use Value

The term "existing use value" does not occur anywhere in the Act, but there are two definitions which are relevant. One is the restricted value of land calculated on the assumption that no planning permission will be granted except for development within the Third Schedule. The second definition (for development charge) is the value of land without the benefit of planning permission.

The policy of the Act is that land should change hands at existing use value, or its value to use as it is actually being used, in view of the fact that when development takes place the Board have to collect the development value.

The Board's announcement of their intention to exercise powers of compulsory purchase in proper cases has brought the Board many letters from would-be purchasers who have obtained a licence to build and who cannot find land except at pre-Act prices. There are certain conditions on which the Board will exercise their powers. The following is the letter which is being sent by the Board in such cases :—

> " Your letter referring to your negotiations for the purchase of land has been received and the Central Land Board are writing to the vendor the attached letter.[1] I must, however, make it clear that the Board are receiving a large number of letters from would-be purchasers of land, each asking for the Board's help in obtaining particular sites at a price in accordance with the Act and if need be for the exercise by the Board of their powers of compulsory purchase.
>
> " Those powers can only be exercised after careful enquiry and consideration of all the circumstances of each case. Before they are used the Board are required by the Act to satisfy the Minister of Town and Country Planning that ' it is expedient in the public interest ' that the land in question should be compulsorily acquired and to obtain his authority so to buy it. Moreover, the process of compulsory purchase takes some time.
>
> " The Board wish therefore to make it clear to you that, while it is their policy to discourage sales of land at a price including development value and to seek by all means in their power including their powers of purchase to bring about a situation in which every piece of land becomes available at a price related to its value for existing use, their immediate policy must be to seek to make land *generally* available to *all* would-be purchasers at the proper price.
>
> " Purchasers themselves can make far the most

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[1] This is a letter drawing the attention of the vendor to the Board's pamphlet *House 1* (noted, *post*, p. 606) and asking him whether he is prepared to adopt one of the three alternative methods of sale suggested therein.

> effective contribution to this end by refusing to pay more than the correct price even though that may mean the postponement of their plans to purchase until there has been time for the policy of the Act to become generally effective.
>
> "The Board will select typical cases for submission to the Minister for compulsory powers and will inform you whether your case can be one of these. These cases will, of course, be selected solely from among persons at the top of their local authority list for private building licences. But the Board certainly cannot undertake to act in this way in every case. These selected purchases are intended to be a warning to others and the Board hope that by this action land will soon be available generally on the correct basis."

Since the availability of a private building licence is one of the conditions, the Board hope that housing authorities will be able to extend the expiry date of licences in proper cases.

The Central Land Board have issued a special pamphlet called *House 1*, suggesting methods for negotiation between a vendor of land on which the building of a house is intended in the near future and a purchaser who wishes to build the house. The pamphlet follows the lines of the statement by Sir Malcolm Trustram Eve, K.C., printed, *ante*, p. 522, and recommends three alternatives: (i) sale at existing use value leaving the purchaser to pay the development charge; (ii) sale at a price including an agreed development charge which is to be paid by the vendor; (iii) sale of the completed house by the vendor after payment of the development charge. Printed copies of the pamphlet are obtainable from the Central Land Board and the offices of the Inland Revenue District Valuers.

Local Authorities and Planning Permissions

From the point of view of the Board who have to value planning permissions, the ideal planning permission is one which is just precise enough to be valued, that is neither too vaguely general in its terms nor too tightly conditioned.

Development Charge—Agricultural Cottages

In Circular No. 62, dated October 20, 1948, the Ministry of Town and Country Planning explained to local authorities the position of agricultural cottages as regards development charge. The text of the Circular is as follows :

1. I am directed by the Minister of Town and Country Planning to draw your attention to the special arrangements which it is proposed to make in connection with development charges on houses for members of the agricultural population, other than houses built by local housing authorities. The principles governing the assessment of development charges on local authority development are at present under discussion.

2. It is intended that the erection or enlargement of such houses shall be free of development charge for so long as the houses are used by members of the agricultural population, but if they are used for other purposes, *e.g.*, as week-end cottages, charge shall become payable.

3. This arrangement will apply to three types of case :—

(*a*) Where it is a condition of a subsidy payable under :

(i) Section 3 of the Housing (Financial Provisions) Act, 1938, as amended by Section 13 of the Housing (Financial and Miscellaneous Provisions) Act, 1946, or

(ii) Section 94 of the Housing Act, 1936, as amended by Section 8 of the Housing (Financial Provisions) Act, 1938,

that the house shall be reserved for members of the agricultural population as defined in Section 115 (2) of the Housing Act, 1946.

(*b*) Where the house is to be erected or enlarged with the aid of an improvement grant under the Hill Farming Act, 1946.

(*c*) Where planning permission is given subject to a condition that the house shall be occupied by members of the agricultural population as defined in paragraph 7 below.

4. In the two former classes of case, the Central Land Board will determine the development charge on the usual

basis, but will suspend collection on the covenant of the developer to pay the charge if and when the house ceases to be reserved in accordance with the condition. No action need be taken by the local planning authorities.

5. In the last class of case, however, the Board will make a nil determination when the house is built. If the house subsequently becomes occupied by persons not covered by the condition, a new planning permission will be necessary to avoid the serving of an enforcement notice, and a development charge would be calculated on that permission.

6. The success of this scheme depends on the co-operation of local planning authorities and other local authorities with delegated powers. The Minister is sure that in the interests of agriculture this co-operation will be willingly given. Local authorities are therefore asked, when an application is received for planning permission to build or enlarge a house for persons covered by the definition of "agricultural population," and the applicant indicates that he wishes to claim relief from development charge, first to ascertain whether any subsidy or grant is payable. If it is, the authority should notify the Central Land Board when they forward the application for determination of charge, and no condition as to occupation by members of the agricultural population need be attached to the planning permission. If it is not, they should attach to the planning permission a condition that the building must be occupied by members of the agricultural population as defined in paragraph 7. The Minister wishes it to be clear, however, that if a request for the attaching of such a condition is not made by the applicant, the local authority need not take any action to remedy the omission. It is in the applicant's interest that the condition should be imposed, and while the Minister is anxious that the local authorities should be as helpful as possible, the applicant cannot expect them to relieve him of responsibility for his own interests.

7. The definition of "agricultural population" which it is suggested local authorities should adopt is :—

> "Persons whose employment or latest employment is or was employment in agriculture as defined by Section 119 (1) of the Town and Country Planning Act, 1947, or in an industry mainly dependent upon agriculture, and includes also the dependants of such persons as aforesaid."

8. Local authorities should not—unless the Minister so directs—serve an enforcement notice merely because the tenant changes his occupation so as to come outside the

definition of "agricultural population," so long as the owner appears to have an honest intention to re-let as soon as possible to a tenant who will be within the definition.

If the dependants of a tenant continue to occupy the house after his death, there will, under the definition given in paragraph 7 above, be no breach of condition.

9. This circular does not apply to farm houses unless they are covered by paragraph 3 (*a*) or (*b*)—e.g., as houses for smallholders or hill farms. The arrangements outlined in paragraph 6 will not therefore apply in these cases, except that local authorities should inform the Central Land Board if subsidy or grant is payable.

Compensation for Abortive Expenditure

Section 79 of the Act

Attention is drawn to the unfortunate consequences of the wording of s. 14 (4) of the Act of 1947, in relation to possible claims under s. 79.

The result of s. 14 (4) and the Erection of Industrial Buildings Regulations, 1948 (No. 1309), *ante*, p. 314, is that an application to the local planning authority for permission to develop land by the erection thereon of an industrial building of any class of which the aggregate floor space exceeds 5,000 sq. ft. "is of no effect", unless a certificate is given by the Board of Trade and a copy thereof furnished to the local planning authority together with the application.

Since s. 79 does not come into operation unless an application under Part III is made and refused or granted subject to conditions by the Minister on appeal, it would appear that, if the Board of Trade refuse their certificate, no effective application can be made under Part III and s. 79 will not be available. If the Board of Trade certificate is refused in these circumstances it would appear to be best to make an application unsupported by a certificate before January 1, 1949, in the hope that an amendment of the Act may be made.

R. D. STEWART-BROWN.

Statutory Instruments

Town and Country Planning (Development by Local Planning Authorities) Regulations, 1948 [1]

(SI 1948, No. 2302)

Made	*October* 14, 1948
Laid before Parliament	*October* 15, 1948
Coming into Operation	*November* 1, 1948

The Minister of Town and Country Planning, in exercise of the powers conferred on him by subsection (3) of Section 35 of the Town and Country Planning Act, 1947 (hereinafter referred to as " the Act ") and of all other powers enabling him in that behalf hereby makes the following regulations.

Citation, interpretation and commencement

1. These regulations may be cited as the Town and Country Planning (Development by Local Planning Authorities) Regulations, 1948 and shall come into operation on the first day of November, 1948.

2.—(1) In these regulations:

" the Act " means the Town and Country Planning Act, 1947;

" the Minister " means the Minister of Town and Country Planning.

(2) The Interpretation Act, 1889 shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Development permissions

3. In relation to the development by local authorities of land in respect of which they are the local planning authority, the provisions of Part III of the Act (including subsection (2) of Section 35 and the Fifth Schedule) shall have effect subject to the exceptions and modifications prescribed in the following regulations.

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[1] The Minister of Town and Country Planning has issued Circular No. 61 dated October 25, 1948, " Development by Local Authorities and Statutory Undertakers ".

4.—(1) Where the authority requires permission to develop the land, the authority shall notify the Minister in writing of its intention to develop in accordance with the form set out in the Schedule hereto and unless within one month from the receipt of such notice (or such extended period as the Minister may during the said month or any period so extended notify in writing to the authority) the Minister requires the authority to make a formal application to him for permission, the Minister shall be deemed to have granted permission for the development described in the notice.

(2) If the Minister directs the authority to make a formal application for permission in accordance with the preceding paragraph, the application shall be made in the form of an application to the local planning authority, and the Minister's direction shall be deemed to be a direction under Section 15 of the Act and the application shall be deemed to have been referred to the Minister under that Section, and the provisions of that Section shall apply to the determination of the application by the Minister.

5.—(1) Subsection (4) of Section 14 of the Act (under which a certificate of the Board of Trade is required in relation to development consisting of industrial buildings) and subsection (5) of that Section (which provides for the keeping of a register with respect to applications for permission) shall apply as if references in those subsections to an application to the local planning authority for permission included a reference to a notice of intention to develop under these regulations.

(2) Before notifying the Minister under the preceding regulation of its intention to develop the land, the authority shall consult with any authority or person with whom but for the modifications herein prescribed the local planning authority would have been required to consult before dealing with the application.

(3) In any case in which any such consultation has taken place, and in any case in which directions have been given to the local planning authority restricting the grant of permission in respect of such development as is applied for, or in which representations have been made to the authority objecting to that development, a statement giving short particulars of such consultation, directions or representations shall accompany the notice of intention.

(4) When the authorisation of a government department referred to in Section 35 (1) of the Act is required, or has been obtained by the authority in respect of the development of the

land without a direction that such permission shall be deemed to be granted as provided in that subsection, a statement to this effect shall accompany the notice of intention.

Other consents

6.—(1) Where the authority requires any consent or approval of the local planning authority other than a permission for development, and that authority is itself the local planning authority to which the application for such consent or approval should be made, such application shall be made to the Minister and his decision thereon shall be final and shall take the place of the decision of the local planning authority.

(2) Where a local planning authority proposes to execute or cause or permit to be executed any works for the demolition, alteration or extension of a building listed under Section 30 of the Act the notice required under subsection (6) of that Section shall be given to the Minister instead of to the local planning authority, and references in that Section to the local planning authority shall be construed as if they were references to the Minister.

Delegate Councils

7. The modifications referred to in these regulations shall not apply to a Council to whom the functions of a local planning authority have been delegated but any such Council shall notwithstanding such delegation apply to the local planning authority for any permission consent or approval hereinbefore referred to and shall give to the local planning authority any notice required under Section 30 (6) of the Act, as if the delegation to the said Council had not been made.

Purchase Notices and Compensation

8. No claim shall be made by a local authority, in relation to land in respect of which they are the local planning authority, under the following sections and paragraphs of the Act:—

- Section 19 (which entitles the owner of land, on refusal of permission, to require the Council of the County Borough or County District to purchase his interest),
- Section 20 (which entitles the owner of an interest in land to compensation on refusal of permission),
- Section 22 (which entitles a person interested in the land to claim compensation for revocation or modification of a permission);

Section 27 (which entitles any person to claim compensation who has suffered damage from an order requiring the discontinuance or removal of an authorised use or building);

paragraph (*d*) of subsection (1) of Section 28 (relating to compensation in respect of tree preservation orders);

paragraph (*c*) of subsection (2) of Section 29 (relating to compensation in respect of building preservation orders); and

paragraphs 1 (3), 2 (2), 3 (3) and 4 (3), of the Fifth Schedule (relating to compensation in respect of operational land).

THE SCHEDULE

[*Form of Notice of Intention to Develop*]

Parliamentary Intelligence

Advertisements Regulations

A motion to annul the Town and Country Planning (Control of Advertisements) Regulations, 1948 (No. 1613) was debated in the House of Commons on November 2, 1948 (*Hansard*, col. 811). The Parliamentary Secretary to the Ministry of Town and Country Planning, Mr. King, stated that he was advised that under reg. 5 (4) (which requires that " before any advertisement is displayed on land in pursuance of the consent [of the local planning authority] the permission of the owner of that land or of a person entitled to grant such permission shall be obtained ") the tenant would be entitled to grant such permission without applying to his landlord except in the rare cases where there is some covenant in relation to the matter in the lease.

Mr. King went on to say that the Government would lay before the House an amending Regulation so as to make it clear that political activities are covered by reg. 12 (1), Class III (*c*) (which provides that advertisements may be displayed without the express consent of the local planning authority in connection with an activity of a " religious, educational, cultural, social or recreational character ").

Development charge—additional factories

In a written reply given in the House of Commons on November 2, 1948, the Chancellor of the Exchequer, Sir Stafford Cripps, stated that an arrangement for relief from the burden of development charge in respect of additional factories similar to the arrangement made for houses to be erected on single plots had been considered, but that the difficulties were formidable. It had not been decided whether such an arrangement could be made.

[*Note*. This answer may be related to Question 20 (b) of Form S. 1 (claims on the global fund).]

Section 59 Scheme

In a written reply given in the House of Commons on November 4, 1948, Mr. Glenvil Hall stated that it was hoped that the Section 59 Scheme (relating to additional payments in respect of certain war-damaged land) would be made before the end of 1948.

Ministry of Town and Country Planning Circulars

[continued from p. 546, *ante*]

Circular No. 61, dated October 25, 1948. Development by Local Authorities and Statutory Undertakers. [4d.]

Circular No. 62, dated October 20, 1948. Development Charge on Houses for Members of the Agricultural Population (see *ante*, p. 607). [1d.]

Dealings with Land under the Planning Acts

By Harold Potter, LL.D., Barrister-at-Law

I. Inquiries Preliminary to Contract (*ante*, p. 48).
II. Contract for Sale (*ante*, p. 104).
III. Requisitions on Title (*ante*, p. 188).
IV. Conveyances on Sale (*ante*, p. 273).
V. Leases (*ante*, p. 353).
VI. Mortgages (*ante*, p. 426).
VII. **Settlements and Wills.**

Settlements and Wills

(continued from p. 554, *ante*)

(e) LIMITED OWNER'S POWER TO EFFECT "DEVELOPMENT"

13. The only express provision on this point of which we are aware is that contained in s. 71 (4), which is peculiarly worded. The essential parts of that sub-section, which deals, of course, with development charge, are as follows :—

> " The purposes authorised for the application of capital moneys—
>
> (*a*) by section seventy-three of the Settled Land Act, 1925, and by that section as applied by section 28 of the Law of Property Act, 1925, in relation to trusts for sale; . . .
>
> and the purposes authorised by section seventy-one of the Settled Land Act, 1925, by that section as applied as aforesaid . . . as purposes for which moneys may be raised by mortgage, shall include the discharge of any sum payable in respect of a development charge under this Part of this Act, being a sum determined by the Board under this section as a capital payment or as an instalment of capital."

We may begin by pointing out that it has just been held that s. 73 of the Settled Land Act, 1925, has not been applied to trusts for sale (*Re Wellsted*, [1948] L. J. R. 1611) save to a very limited extent. Apart from this difficulty it is necessary to consider what ss. 73 and 71 respectively authorise, bearing in mind again that normally a development charge is *not* to be charged upon the land, the word " charge " being used in the sense of " price " and *not* of " incumbrance ". No doubt s. 71 (4) authorises expenditure on development charge provided that the development may be made. The point is that this section does not authorise development but only payment of a charge where the estate owner can make the development.

14. To our mind most of ss. 71 and 73 of the Settled Land Act, 1925, has no relevance to this problem at all. The importance of s. 71 lies in sub-s. (1) (i) " discharging an incumbrance ", and (ii) " paying for any improvement auhorised by this Act or by the settlement ". In s. 73 (1) the only really relevant clause is (xv) which, however, appears to relate solely to the costs and expenses of " plans, surveys and schemes ", and " all negotiations " to enable the tenant for life to carry out any " improvement or development " of the settled land in accordance with the " Town Planning Act, 1925, or any similar previous enactment ". In our view it requires some ingenuity to read into this provision the payment of " development charge " to purchase the right to do something different from the right that was settled. " Costs and expenses " would normally be interpreted in a narrower sense. Before passing to the possible consequences of this view we should also refer to s. 73 (1) (xii) which enables the tenant for life to direct the purchase " either in fee simple or for a term of sixty years or more " of " any easement right or privilege convenient to be held *with* the settled land for mining or other purposes ". A material change of user *is* a " right or privilege ", but whether it can be held " with the settled land for . . . other purposes " seems a much more dubious proposition, since once the planning permission is granted it *is* the settled land in one respect. Of course the fact is that the languages of the Settled Land Act, 1925, and the Town and Country Planning Act, 1947, are inconsistent with one another.

15. Assuming that s. 73 (1) (xv) of the Settled Land Act, 1925, does not materially assist it may be argued that s. 71 (4) of the Town and Country Planning Act, 1947, does authorise a change of user when either (i) the development charge becomes an incumbrance or (ii) it is an improvement within Schedule III of the Settled Land Act, 1925. Now Schedule III never contemplated the present circumstances at all in which a development permission must be bought because the

right to develop was a right to be purchased from the State.[2] Hence, no provision for this is directly made in Schedule III. Let us take a simple example : X has a large house outside a town recently scheduled to be a New Town. Naturally enough, he does not wish to continue to live there and become an urban dweller. In order to let it to the best advantage in such circumstances he applies for permission to let it as offices. This permission clearly carries a development charge but in our view is not covered by Schedule III. If it is covered at all we think that it must come under s. 73 of the Settled Land Act, 1925, but in these circumstances and quite apart from the difficulty of language we do not see any purpose in the reference to s. 71 of the Settled Land Act, 1925, in s. 71 (4) of the Town and Country Planning Act, 1947, since this view makes s. 73 of the Settled Land Act, 1925, cover virtually anything.

We have discussed this matter in such detail to show why we think that any will or settlement comprising land susceptible of development should contain a clause providing for development charge, but at the same time there are limits to which this may be put.

16. But even assuming there is a power to spend capital moneys on a development charge does it follow that the tenant for life has the power to make any development other than an authorised " improvement ", which we think it must be assumed that he has power to make ? We do not think that this follows at all and that the power to expend capital moneys must be limited to developments authorised by the Settled Land Act, 1925. If that is correct the right to make such developments brings us back to the essential problem of the nature of the interest settled. This can only be determined by the Courts or by further Legislation. If all that is settled is the " existing use ", then the acquisition of a new use is an " investment " and must fall within s. 73 unless it is an " improvement " within s. 83 of the Settled Land Act, 1925. We do not propose to weary the reader with argument on a point which is obviously of the greatest complexity. We suggest simply that the best course is to provide a clause authorising developments and giving directions concerning development charges.

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[2] To avoid criticism here I have put the position as favourably to the landowner as possible. I would naturally say that all rights of user other than the permitted use were vested in the State.

(f) Interests Determinable on Development

17. There is, however, the other point of view which may be taken by testators, namely, that they do not wish development to take place. We may refer to our example of the school. It must be borne in mind that this is a new problem in essence, because formerly the " use " was not controlled in this way and a lease for a school would normally be determinable by a succeeding remainderman who wished to live in the family home. Obviously the first precaution to be taken by a testator is to require the consent of the trustees to *any* disposition of the mansion house, but this restriction can only be imposed upon this particular form of property and then with considerable limitations (Settled Land Act, 1925, s. 65; *Re Feversham S. E.*, [1938] 2 All E. R. 210).

18. The question, therefore, arises whether and to what extent, if at all, it is possible by means of a determinable interest to prevent the development. There is nothing in s. 106 of the Settled Land Act, 1925, to invalidate determinable interests as such, even when directed to user (*Re Trenchard*, [1902] 1 Ch. 378), but the condition in such circumstances will be void so far as it prevents the exercise of the powers under the Act (*Re Acklom*, [1929] 1 Ch. 195; *Re Orlebar*, [1936] 1 Ch. 147). Therefore, if a life interest is made determinable upon any voluntary application for " development " such a condition would certainly not be wholly invalid. To take an example, we *think* that if a tenant for life applied for permission to convert his dwelling-house into three flats he would immediately cease to be tenant for life under the trust instrument and the remainderman would become entitled to be estate owner. On the other hand, since he could not make a lease of part of the premises as a flat without such permission, it might be argued that such a condition would not affect this case because it would be inoperative under s. 106 of the Settled Land Act, 1925.

We have chosen this example not merely for its probability but because it does reflect the ambiguity of the position. Once again we are back at the question : What is the *nature* of the interest settled ? It is obvious that to any argument that s. 106 would prevent the operation of the right of reverter, it could be replied that the settlement only conferred the power to lease the dwelling-house and not to lease two or more flats and that the tenant for life could only make a lease of flats if they formed part of the property settled. This they could not do during the life tenancy because it determined immediately the application was made.

It is necessary to make such a determinable interest operate only where the consent of the trustees is not obtained to allow some elasticity and only on voluntary application or the result of compulsory acquisition may be objectionable. Nevertheless, such a determinable clause should not be inserted without careful consideration because in fact it is likely to operate as a strong deterrent to development and in these days of economic chaos it may prove a great hardship to the tenant for life. On the other hand enlightened trustees should prevent this result.

(g) COMPENSATION PAYABLE UNDER THE ACT

19. Under s. 80 of the Settled Land Act, 1925, money received by way of damages or compensation for breach of covenant under a lease or grant is made capital money. One would have thought that with that clause before his eyes the draftsman of the Town and Country Planning Act, 1947, would have made some similar provision. If he has we have not found it. Obviously compensation on compulsory purchase is capital money, but compensation may be payable (i) for refusal to grant planning permission under s. 20; (ii) for modification or variation of permission under s. 22; and (iii) for a discontinuance order under s. 27. There are a variety of other cases connected, for example, with tree preservation orders (s. 28), and building preservation orders (s. 29), and in exceptional cases for orders for removal of advertisements (s. 32). We have, however, chosen the first three because they illustrate the dilemma. The refusal to grant planning permission is a refusal to give to the limited owner something which the settlement has not conferred upon him. We may repeat that a planning permission *need* not be granted to the estate owner but may be given to someone else and until grant the estate owner had no right so to use the land. The only "right" that *could* be settled is the "right" to apply for permission and this is not, as we have said, inherently annexed to the estate alone. On the other hand, the third case is taking away that which the owner had, while the middle one is giving back to him capital money which was already paid as a development charge: see s. 22 (1), proviso (*a*).

S. 80 of the Settled Land Act, 1925, was inserted therein because of the decision in *Re Lacon*, [1911] 2 Ch. 17, where dilapidations recovered for breach of a covenant to repair were held by the tenant for life on the ground that the tenant for life was not liable to repair. In *Re Pyke*, [1912] 1 Ch. 770, trustees in a similar position held the damages as capital money. Now it cannot be voluntary waste to be refused planning permission or suffer a discontinuance order, nor, even, it is thought, equitable waste. On the other hand it cannot, in our opinion, be legitimately regarded as a disposition by the tenant for life of any interest in the land, since unlike compulsory acquisition, there is no question of the tenant for life doing anything except receive the compensation. Where capital money has been expended its return by way of compensation may properly be treated as capital money, but in other cases we are inclined to the view that in the present state of the law any such compensation would belong to the tenant for life assuming his position to be in this respect the same as that of a legal tenant for life, an assumption which has already been made with regard to waste : *Re Fitzwalter*, [1943] Ch. 285.

In these circumstances, and until the ambiguity is disposed of, testators and settlors must decide what they think should be done and provide for it by an express clause. To some extent it must be a matter of taste, but we should have thought generally that the money so recovered should be treated as capital money and have provided a clause to that effect.

20. The problem of compensation as between tenant for life and remainderman can scarcely be divorced from that of positive liability which may arise from compliance with directions, such as abatement notices for preserving amenity (s. 26). Substantially the problem is the same because in all cases they arise out of the creation of a new and lawful use or the abandonment of an old and unlawful use.

This can be emphasised by reference to s. 81 of the Settled Land Act, 1925, which requires money which "arises from settled land otherwise than under this Act" to be treated as capital money. Whether money can fairly be said to arise from settled land in the cases given it is hard to say. Furthermore, the unsatisfactory character of the provision is indicated by the more precise terms of s. 88 of the same Act which, however, depends upon the certificate of the Minister of Agriculture.

Provisions of this sort have caused considerable difficulty in the past. The problem is ultimately one of capital and income. The essential difficulty goes to the root of the whole nature of the change effected by the Town and Country

Planning Act, 1947. The fact that capital money can be expended upon a development charge is, of course, some evidence that the acquisition of a new use is a fresh capital asset and not merely a change in the existing use, but this view cannot be pressed too far.

Compliance with dangerous structure notices (*Re Whitaker*, [1929] 1 Ch. 662) and with local authority notices to repair (*Re Smith*, [1930] 1 Ch. 88) may be payable out of capital by trustees for sale, and, perhaps, a tenant for life might be able to persuade the trustees in some cases that they would fall within Schedule III of the Settled Land Act, 1925. A sum paid for extinction of patronage under the Welsh Church Act was capital money (*Re Lord Penrhyn's Settlement Trusts*, [1923] 1 Ch. 143); likewise compensation paid for extinguishing a licence of licensed premises (*Re Bladon*, [1912] 1 Ch. 45). But compensation for damage done to a park during a war (*Re Williams*, [1922] 2 Ch. 750), and compensation paid under an agreement and not by virtue of an arbitration award in respect of possible injury to a ferry were held to be casual profits and not capital money (*Re Lindsay's Settlement* (*No.* 1), [1941] Ch. 170). The principle was stated by James, L.J. (*Re Barker* (1881), 17 Ch. D. 241, at p. 243), as follows: " Where property is taken compulsorily from any person who is not *sui juris* and who is not competent to make the subsequent alteration in the disposition or the devolution of that property, which would naturally follow such a change, the presumption is, if the words of the Act of Parliament really admit of that interpretation, that the Legislature did not intend to interfere with any legal rights or any legitimate expectations of any person whatever ".

The question, therefore, seems to be a question whether or not any money paid or payable is primarily a matter of income. Maintaining amenities should fall on income, we think, just as payments for change of use should *prima facie* constitute capital payments. To avoid litigation a clause could determine most of the cases and provide for the exercise of the trustee's discretion in the rest.

So long as *Re Wellsted*, [1948] L. J. R. 1611, remains law it will be necessary to insert a clause enabling such compensation to be reinvested in land unless there is a general clause covering all " capital moneys " wherever the settlement is by way of trust for sale.

(h) Opposition to Proposals for Notices or Orders, etc.

21. A number of the activities of local planning authorities can only be carried out after an opportunity has been given to the landowner to oppose the proposal; for example, a tree preservation order or historic building preservation order. One of the obvious problems that arises is whether (a) a limited owner who is estate owner should be compelled to oppose, and (b) the expense of so doing, where he opposes, should fall upon capital or income. The Settled Land Act, 1925, s. 73 (1) (xv), expressly contemplates the expense of opposing a Town Planning Scheme as being a capital expenditure. Under s. 92 of the same Act the Court can order the costs of proceedings taken or to be taken out of capital money and such expenditure has been authorised; for example, for surveying and serving notice to do repairs on house property on the estate (*Re Tubbs*, [1915] 2 Ch. 137).

It seems to us that opposition to a proposal for a notice or order under the Act does not strictly fall within the provisions of s. 73 since the Scheme as a whole is of a different character, and it is obvious that different considerations arise. Pending a decision it is thought that (i) a limited owner should be compellable to oppose such a proposal, and (ii) in such circumstances his costs and expenses should be borne by capital moneys. In our opinion, he cannot be compelled to oppose without an express clause. Nevertheless, an estate owner is an express trustee of the land (cf. Settled Land Act, 1925, s. 16) and of his Settled Land Act powers (*ibid.*, s. 107), but whether he is thereby bound to consider the interests of the remainderman when he decides whether or not to oppose a planning proposal must, we think, be left in abeyance because his powers are essentially a matter for his *bona fide* discretion (*Bruce* v. *Marquis of Ailesbury*, [1892] A. C. 356; *Re Richardson*, [1900] 2 Ch. 778; *Re Lord Stafford's Settlement*, [1904] 2 Ch. 72) and his trusteeship of the land itself does not so far seem to have been considered as altering his position when he held a limited legal estate (*Re Fitzwalter*, [1943] Ch. 285). In our view, a clause requiring the estate owner to act upon the directions of the trustees should be binding.

22. What we have said about proposals for notices would appear to apply with even greater force to enforcement notices under s. 23. Two points of substance particularly emerge. First, since officials are fallible the notice may not be justified and it can be questioned by an appeal to a court of summary jurisdiction (s. 23 (4)). Secondly, the person primarily liable

for the expenses of compliance with the notice is the person who carried out the unauthorised "development" (s. 24 (2)), but this may not be the estate owner for the time being and consequently the problem of recovery arises.

The expenses of disputing an enforcement notice do not appear to fall within s. 73 of the Settled Land Act, 1925, and s. 92, within which they do appear to fall, involves an application to the Court. Consequently, it seems desirable to authorise the trustees to expend capital moneys when they consent to an appeal.

The expense of compliance with an enforcement notice should normally be recovered from the person responsible. Since otherwise the liability will fall on the owner or occupier of the *legal estate* it may seem that it is not necessary to provide for this, because the expense will not fall upon the trust fund. Nevertheless, it seems unfair that what in fact is a capital expenditure should fall upon a tenant for life, and he might have small chance of recovering the expenses. Furthermore, there could easily be cases in which recovery might prove very embarrassing, as, for example, when the contravention had been committed by the settlor. Again, this seems a case in which the discretion should rest with the trustees and all expenses fall upon capital.

23. At the same time it may be pointed out that loss to the trust estate may arise by reason of the purchase of land in which a planning contravention has not been discovered. This is not within the present clause, since the normal loss will be caused by loss of anticipated use; *e.g.*, by being unable to use an outhouse as a garage. S. 24 (2) (enabling loss to be recovered from the person primarily responsible) does not apply since no "expense" is incurred by the loss of use, but only if and so far as any structural alterations have to be made. Having regard to the present difficulties in ascertaining the "existing use" and to the conflicting views and practice in conveyancing method this is quite likely to occur. Of course this may just as well occur in lending money on mortgage, which is even commoner as an investment. Here the trustees will be liable if they have not exercised that special degree of care due from trustees as if towards persons for whom they felt morally bound to provide: *Re Whiteley* (1886), 33 Ch. D. 347, 355. It must be borne in mind that while the surveyor's report may protect in respect of the question of *value*: Trustee Act, 1925, s. 8, the trustee must exercise his own discretion in respect of the *nature* of the security: *Blyth* v. *Fladgate*,

[1891] 1 Ch. at p. 354. It has been held over and over again that the " use " of the premises is material in considering the nature of the security: cf. *Learoyd* v. *Whiteley* (1887), 12 App. Cas. 727. Since the use is material, it is equally clear to-day that the validity of the use is material. No doubt the Courts will protect all trustees who have taken proper steps to ascertain the " existing use " even though they may prove to be mistaken in their conclusion. Nevertheless, until the Courts have decided what those proper steps may be there is much to be said for providing against liability for loss to the trust fund and also to provide that, if not otherwise recovered, the loss shall be borne by capital and not income.

(k) Settled Development Value

24. In the early part of this article (*ante*, p. 548) we drew attention to one of the difficulties regarding development value, namely, whether or not it passed under a will and required an assent. This point arises whether or not the land is settled by the will, but the nature of the development value raises other issues where it is associated with a settlement.

Although care has been taken to provide for the special cases when the land is vested in charitable or public trusts or in the Public Trustee, where in any case any of these trustees are not entitled to act, nothing has been provided in the ordinary case of settled land. The whole of the provisions of Part VI proceed upon two assumptions, (i) that the claim is vested in the legal estate owner of an interest in land, *i.e.*, that the claim can only be made in respect of a legal estate; and (ii) that the claim has been converted into personalty: s. 64. It nowhere provides either that an estate owner having no or only a limited beneficial interest must claim on behalf of the beneficiaries generally, nor does it provide for the destination of the proceeds of a successful claim in such circumstances, though it must be apparent that most of the substantial awards will be in respect of settled land. The position is rendered doubly difficult, because in some cases, particularly minerals, the development value could properly be described as in respect of a wasting asset, since normally a tenant for life would receive one-quarter or three-quarters of a rent depending upon his impeachability for waste.

We think that probably the correct method of dealing with existing settlements is that the stock or money allocated in respect of development value should be apportioned between capital and income on the same principle as redeemed annuities were apportioned in *Re Carr's Settlement*, [1933] Ch. 928, because the redemption *vis à vis* the settlement was compulsory. There remains the point whether such compulsory redemption in the case of minerals must be treated as if the minerals were worked by the tenant for life under settled land powers. It is thought that, although the development value payments must be treated as personalty they are no more personalty than payments made on compulsory redemption of annuities.

25. On the other hand, although the right to claim is vested in the estate owner it would be vested in him as a trustee. Therefore, it would seem that he is under a duty to make a claim under the general duty of trustees to get in the trust property, subject, of course, to the protection afforded by ss. 15 and 22 of the Trustee Act, 1925, and by s. 58 of the Settled Land Act, 1925. Clearly the estate owner must give consideration to the matter and not act otherwise than in good faith: *Re Owens, Jones* v. *Owens* (1882), 47 L. T. 61 at p. 64, or with carelessness or neglect: *Re Greenwood, Greenwood* v. *Firth* (1911), 105 L. T. 509.

26. Where, however, the settlement is made after the Appointed Day the development value would not be included in the settlement unless it is expressly mentioned just because it is vested in the settlor as personalty and, therefore, presumably severed from the land. Where it is decided to include it in the settlement it is necessary both to mention it and to provide that when payments are made they shall be treated as capital moneys for the purposes of the settlement. This should be done by reference to s. 78 of the Settled Land Act which would virtually operate as conversion, thus avoiding the difficulty that there was no conversion before 1926: *Re Twopeny's Settlement*, [1924] 1 Ch. 522. It is, however, possible that the claim should be assigned to the trustees of the settlement rather than the estate owner of the land, since the stock issued (the normal case) will have to be treated as an investment of capital moneys. Notice of the assignment must, of course, be given to the Central Land Board.

27. Obviously what we have said applies generally to trusts for sale as well. The position differs only in that there is no question of conversion of the beneficial interests because they are in any event personalty. On the other hand questions of apportionment where the land is already settled do seem to be really affected, because the rules for apportionment between capital and income, though similar in many respects, are not

quite the same and are much more dependent upon the precise terms of the trust. The importance of all this lies in the fact that the substantial sums for development value are likely to be those connected with minerals and such claims where apportionment is difficult and important.

28. In certain exceptional cases the Central Land Board have announced that development charge may be set off against development value so that they shall more or less cancel out. This particularly applies where there is a building plot. In this case it is important to ensure that (i) the will or settlement includes the development value, otherwise, of course, the beneficiary may have to pay the development charge without getting the advantage of the development value; and (ii) the development value is treated as capital and not as income. At the moment this does not amount to a difficulty, but we foresee that this practice may be enlarged when the disparity between the true development value of the land and the sum of £300 millions becomes apparent.

Will and Settlement Clauses

By Harold Potter, LL.D., Barrister-at-Law

I

It is hereby declared that :—

(a) Any compensation paid in respect of any compulsory acquisition under the Town and Country Planning Act 1947 of any land for the time being subject to the trusts hereof or any part thereof or in respect of any refusal to grant a planning permission for the purposes of the said Act or for the modification or variation of such planning permission or in respect of an order for the discontinuance of any use of the said land or any part thereof under the said Act shall be treated as capital money and shall be invested by the Trustees in such authorised investment or investments as the person entitled to the income thereof for the time being shall direct [And it is hereby further declared that any such compensation may at the discretion of such person entitled to the income as aforesaid be invested in the purchase of a fee simple interest in land].[1]

(b) Wherever any condition required to be performed by this will [settlement] shall become impossible or in the opinion of the trustees undesirable to be performed by reason of any restriction or alteration of the use enjoyment or development of the land for the time being subject to the trusts hereof or any part thereof under or by virtue of the Town and Country Planning Act 1947 then such condition shall be deemed not to be so required to be performed by this will [settlement] to the extent only of such impossibility or undesirability as aforesaid.

(c) Any beneficiary who is for the time being the estate owner or occupier of the land hereby devised [settled] shall within days of the receipt of the same by him send by registered post to the trustees and to their solicitor, if known, at their last known address full particulars of any proposal for a notice or order and any order direction enforcement or other notice made or given under or by virtue of the Town and Country Planning Act 1947.

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[1] This should be added where the settlement is by way of trust for sale only.

(d) The estate owner or estate owners for the time being of the land for the time being subject to the trusts hereof shall at the request of the trustees hereof [after consultation with any person entitled to any vested interest in expectancy under the said trusts] and at the expense of the trust fund take such steps as he or they may be advised to be legally possible and desirable to oppose any proposal for any notice or order made or given under or by virtue of the said Town and Country Planning Act 1947.

(e) The costs and expenses incurred in appealing against an enforcement notice served under or by virtue of the Town and Country Planning Act 1947 in respect of any planning contravention shall be borne and paid out of capital moneys provided that such appeal is made with the consent of the trustees, but in any other case the costs and expenses shall be borne by the person or persons appealing as aforesaid.

(f) All expenses involved in compliance with any enforcement notice served under the Town and Country planning Act 1947 in respect of a planning contravention shall be borne by capital moneys unless in the opinion of the trustees the estate owner for the time being responsible for such expenditure was himself responsible for such contravention but any estate owner shall take such steps to recover any such expenditure incurred in such compliance as aforesaid from any person liable under the said Act to pay the same as the trustee shall direct.

(g) No trustee or estate owner for the time being of any estate or interest in land including any mortgage or charge on land for the time being subject to the trusts hereof shall be liable for any loss to the trust estate arising from compliance with any enforcement notice served under the Town and Country Planning Act in respect of any planning contravention except and so far only as such contravention was committed or authorised by such trustee or estate owner or any agent acting on his behalf.

II

AND THIS DEED FURTHER WITNESSETH that in further pursuance of the said agreement the settlor as settlor hereby assigns unto the Trustees ALL THAT the right and interest in and claim to any payment made or stock issued in respect of depreciation in value of the land hereby settled under and by virtue of the Town and Country Planning Act 1947 TO HOLD the same unto the Trustees absolutely to be held on the trusts hereby declared [concerning any capital money arising under the Settled Land Act 1925 in respect of the land hereby settled].[2]

Conveyance, Lease or Mortgage of Dead Ripe Land[3]

By HAROLD POTTER, LL.D., Barrister-at-Law

Recital

WHEREAS the Minister of Town and Country Planning has issued a certificate dated the —— day of —— under section 80 of the Town and Country Planning Act 1947 in respect of development on the property hereby conveyed [leased *or* mortgaged] for the purposes referred to in the said certificate.

Declaration of Use

[The said property is held at the date hereof] *or* [The premises hereby demised are demised] *or* [The property hereby mortgaged is held at the date hereof] for use as [agricultural land] and for use for such further purposes of development as are authorised by the said certificate of the Minister of Town and Country Planning dated the —— day of —— together with the right [with the consent in writing of the [Lessor] *or* [the Mortgagee]] to use the said property for such other purposes as at the date hereof or hereafter may be authorised under or by virtue of the Town and Country Planning Act 1947.

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[2] The words in brackets should be inserted in strict settlement; otherwise the clause is applicable to trust for sale as well.

[3] If the building is carried out by building lease it will be necessary to have the same clauses. It will be vital to insert a covenant about compliance with the certificate of the Minister. Such a covenant will also be necessary in a mortgage.

Covenant

The [Lessee] *or* [the Mortgagor] will within one year from the 1st day of July 1948 or such extended time (if any) as the Minister of Town and Country Planning may allow erect build construct and complete upon the property [hereby demised] *or* [hereby mortgaged] under the inspection and to the satisfaction of the surveyor for the time being of the [Lessor] *or* [Mortgagee] such works and buildings and other operations including any material change of use as are authorised by the said certificate of the Minister of Town and Country Planning [And also will by means of vouchers or other reasonable evidence when required on or before the —— day of —— satisfy the said surveyor that the sum of £—— has been expended on the said works buildings and operations] [And also will pay and discharge the reasonable fees and charges of such surveyors] Provided always that if such works buildings operations and material change of use shall not be completed before the said —— day of —— or such extended time as may be allowed as aforesaid [and this lease shall not be determined by the exercise of the proviso for re-entry for breach of covenant hereinafter contained by reason of the failure of the Lessee to complete as aforesaid the lessee will pay any development charge imposed under or by virtue of the Town and Country Planning Act 1947 occasioned by the completion of the said works buildings operations and material change of use as aforesaid] *or* [and the mortgagee shall not call in the principal sum and interest hereby secured for breach of this covenant any development charge occasioned by such failure to complete the works buildings and material change of use as aforesaid may be paid by the mortgagee and shall thereupon be charged with interest thereon on the said rate of £—— p.c. p.a. upon the property hereby mortgaged].

Correspondence

To the Managing Editor,
Journal of Planning Law.

The "Governing Principle"

Sir,

It is becoming increasingly clear that the Town and Country Planning Act, 1947, cannot achieve the aim enshrined in the "Governing Principle" since that Principle is fundamentally self-contradictory. Free interchange postulates freedom of contract, free competition, and free negotiation. Such freedoms cannot exist where the price is fixed by Act of Parliament.

T. Harry Tilly,
Solicitor.

West Hartlepool.

To the Managing Editor,
Journal of Planning Law.

Development Value—Marginal Cases

Sir,

The correspondence at the end of your October issue discusses policy and prompts me to write on policy in another direction.

Since 1939 development other than for war needs or by Government direction has practically ceased and been stagnant, and I suggest it is becoming apparent that the £300 million fund will be hopelessly inadequate to meet claims upon it when one considers the many plots, estates, and change of use claims for the whole country likely to be made; also I suggest the Legislature did not pass the Act to operate heavily against those concerned with current development, collecting from them millions in development charges, but rather as a long-term enactment with interim easement of application.

Is not a more liberal interpretation of marginal cases desirable, apparent lately in one or two ways, and still possible by the Minister of Town and Country Planning if so disposed through the directions and regulations he is empowered to make also in further legislation which has been mentioned as probable? One easing of the application of Section 80 seems desirable—whether by regulation or legislative action—an easing of the rigidity regarding the qualifying submission of plans. Surely the planning permission carried forward (*i.e.*, obtained between 21 July, 1943, and 1st July, 1948) should automatically carry exemption from development charge and apply to the land whoever is the present owner.

May I also suggest that where virtual exemption from development charges exists the needless filling in of forms to assess a development charge and then forms to claim compensation from the £300 million fund (the one offsetting the other) be cut out thereby saving much time and trouble also reducing the claims on the compensation fund—a simple certificate of exemption seems appropriate.

W. MIDMER.

Upper Norwood.

To the MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Dead Ripe Land

Sir,

With reference to answer to query No. 17 in your November issue, we have received a letter dated 27th October from the Central Land Board in London, which contains the following:—

"If a dead-ripe certificate has been granted, the land to which it refers can be sold at its value with permission to carry out the development described in the certificate. If some other development is carried out, the charge would be assessed on the basis of the difference between the value of the land with permission for the development to which the certificate refers and its value for the other development.

This would not, of course, hold if the certificate contained a condition that the development to which it refers must be carried out within a prescribed period and that period has elapsed".

This appears to add something useful to your answer, which might be of interest to your readers.

WALTER H. & G. M. DAY,
Solicitors.

Maidstone.

To the MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Existing Use Value

Sir,

What you and your correspondents say as to the price at which land suitable for early development is changing hands is surely only what one would expect. It is a law of economics that indirect taxation will be passed on to the consumer. Sir Malcolm Eve seems to recognise that this is operating in the case of the development charge in the words he uses in his letter to the Minister published in your September issue.

We are assured that the development charge is not a tax in the same way as we were assured that the Special Contribution was not a capital levy. It is immaterial what such impositions are called. It is their real effect that counts. The development charge, so long as it is not balanced by a fixed payment for loss of development value, imposes a tax on development. The inevitable result eventually is to increase the price of what results from the development.

With great respect to Sir Malcolm Eve, I submit that he is wrong to adopt the coercive measures he proposes to stop the operation of this natural process. What will happen will be that some landowners will be penalised by having their land compulsorily acquired at prices excluding the development value, while others will get the full price. Such discrimination will bring about a measure of injustice while the object will not in practice be achieved.

The solution is for the Minister to fix the amount to be paid for loss of development value and state definitely when it will be paid. It was with this point in mind that he had a "second" thought on the question of the amount of the development charge, making it 100 per cent. of the increase in value. If he will now have a "third" thought and fix the loss of development value payment in the same way, his object will be achieved.

R. E. Selby,
Solicitor.

London.

To the Managing Editor,
Journal of Planning Law.

The Central Land Board's Purchasing Powers

Sir,

I feel that the statements made by Mr. Rimmer and Mr. Daniel in their article on this subject in the November issue may mislead those of your readers who are more interested in their own problems than in the problems of the Central Land Board. It is apparently implied (see p. 520, *ante*) that the Board have no power under s. 43 to purchase land for resale if the landowner can show that he himself proposes to carry out the development concerned. It is possible that the Court might take this view, but I cannot feel it is likely. Certainly no reliance should be placed on this argument when planning dealings in land.

It seems far more likely that a Court would argue as follows: If the Board purchase land, and if in fact they intend to resell it at a price which includes development charge for a permitted development, it cannot be said that the land was not bought "for the purpose of" that resale. The Board's motives for entering into such a transaction are not a matter for the Court at all—though they are of course a matter for the Minister to consider when deciding whether the purchase is "expedient in the public interest".

It follows from this line of reasoning that the Board can buy from one intending developer and sell to another. It does not follow that they can do this in such a way that the final price of the developed land is not "inflated". Indeed, it seems to follow from the Development Charge Regulations (*ante,* p. 241) that if the land *can* be made to fetch an inflated price, the Board *must* so assess the development charge that the final price is as inflated as possible. If they assess it lower than this, the land will still tend to change hands above its existing use value, and the "guiding principle" will be violated. Nor does there seem to be any provision for assessing the charge differently when the Board buy and resell the land, and when the land remains throughout in private hands.

T. A. Blanco White.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The question of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

20. *Compulsory acquisition by Central Land Board.*

I shall be obliged if you will deal with the case of land purchased years ago with a considerable building value (together with a house), the owner having in mind the eventual development of the land as a building estate when he no longer wishes to use the property as a private residence. If he claims under Form S.1 will he run the risk of having the property compulsorily acquired by the Central Land Board under s. 43 of the Act? [G. B. & Co.]

ANSWER

In reply to a question put to him at the meeting of the National Federation of Property Owners on October 14, 1948, Sir Malcolm Trustram Eve, K.C., the Chairman of the Central Land Board, stated that the Board had no intention of acquiring land which the owner was not willing to sell at any price. The Board were only concerned with cases in which the owner was willing to sell only at a price in excess of the existing use value. [J. B.]

21. *Dead ripe land—alternative development.*

I shall be glad to have your opinion on the following point:—

> An owner of land has obtained a certificate under s. 80 of the Town and Country Planning Act, 1947, and in the schedule to the certificate the description of development is stated to be the erection of a dwelling-house on land—which land is shown edged red on the plan annex thereto. The plan shows the proposed site of a house in respect of which a plan was approved by the Council under the Building By-laws and Town Planning Scheme. The plan approved by the Council is annexed to the certificate.

I shall be glad to know: (1) Whether the owner is bound to erect the same kind of house in respect of which the plan was submitted to the local authority, or whether he can erect another house provided this does not exceed an increase of 1,750 cu. ft. or one-tenth if greater from the development detailed in the plan. The possibility is that the house erected would be a smaller one. (2) Whether it is possible to obtain any variation or amendment to the certificate itself, and upon what grounds. [M. T.]

ANSWER

1. (a) The house erected must be substantially that referred to in the certificate. (b) As the house cannot have been a building in existence on July 1, 1948, it cannot be enlarged under the exemption of the Third Schedule although it may be under the Development Charge Exemption Order, 1948 (No. 1188).

2. There seems to be no reason why a certificate should not be amended at any time up to the date when the payment of compensation under Part VI of the Act is authorised. [W. A. L.]

22. *Dead ripe land—dealings with.*

If a customer of the bank, who is the estate owner of a parcel of freehold land, has obtained a certificate from the Minister of Town and Country Planning under s. 80 of the Town and Country Planning Act, 1947, and desires to obtain a loan from the bank on the security of the said parcel of land for the purpose of developing the same, can the bank legally take an assignment of the benefit of such certificate as part of their security? Generally, is it possible to assign the benefit of the certificate as aforesaid on the sale of freehold land in respect of which such certificate has been obtained? [B. & Co.]

ANSWER

The Minister certifies the land—not the owner. Thereafter the land may be sold or mortgaged as certified ripe land, and the important thing is to verify the certificate. The certificate can be recited if desired and can be handed over as a document affecting the title, but no assignment of the rights thereunder appears to be necessary. The rights accruing to the land under the certificate could be exercised by a purchaser even if the certificate were unknown to him at the time of acquiring the land. [W. A. L.]

23. *Development charge—building agreement.*

We shall be glad if you will kindly enlighten us on the following questions:—

Firstly, in January, 1947, A entered into a building agreement with B, according to which B should erect on the plot of land a number of dwelling-houses. As soon as one dwelling-house is completely finished to A's satisfaction, B has the right to call for a conveyance of the property. Who in such case would be responsible for the development charge, A or B? B will not be the owner until the conveyance is granted.

Secondly, B, above, in 1947 submitted plans for the erection of one house on part of the land. These plans were approved by the local authority and permission to build was granted, but before building operations could be commenced the grant of a building licence was suspended and permission is endorsed to that effect. Would B be liable for a development charge? [H. L. & R.]

ANSWER

(1) Development charge is not necessarily payable by the owner of the land, but by the person who undertakes the development. The only requirement is that laid down in s. 70 (1) that a person applying for determination of a development charge shall have a sufficient interest in the land to carry out the development.

(2) B submitted plans in 1947 in consequence of which the following points need to be considered:—

(a) The building agreement does not call for the erection of any particular building and is probably not a contract to which s. 80 (3) would apply.

(b) If planning *application* made before January 7, 1947
  (i) it may be possible to get case within s. 80;
  (ii) if planning consent granted under interim development control since July 21, 1943, it will carry forward as a consent under Part III of the Act (s. 77) and be available for the purpose of s. 80.
  (iii) if planning consent granted otherwise than in (ii) it is dead and fresh application under Part III of the Act must be made and permission granted before s. 80 can be utilised. [W. A. L.]

24. *Development charge—land purchased in* 1947 *from local authority at building land price.*

In July, 1947, A purchased from a local authority a vacant plot of land in the shopping area of an existing housing estate intending to build thereon a house and shop. The sale was authorised by the Minister of Health at a value fixed by the district valuer, namely £275 for 784 sq. yds. With the approval of the council a temporary shop was erected early in 1948 (before July 1). Plans of a bungalow which was to occupy approximately 400 sq. yds. were approved in September, 1948, and a licence to build has recently been granted. On application for determination of the development charge the district valuer has recommended a charge of £130 for the 400 sq. yds. under consideration. Surely no development charge can be justified unless there is a very serious anomaly in the Act. [E. H. W.]

ANSWER

When A purchased the land he was a free agent and not bound to acquire at the price fixed by the district valuer. Therefore, what may or may not have been taken into consideration by the district valuer is not strictly relevant. The district valuer, like most others, may have had an imperfect idea of the possible effects of the Bill, but it was for A to make up his own mind. What A in fact acquired was building land subject to the possibility of restrictions under the Bill then published, and the right to compensation under Part VI thereof. That he still has. As regards the bungalow plot, does not A come within the extended term of the proposals relating to single plot owners? If so, the development charge will be balanced against his Part VI claim. [W. A. L.]

25. *Development charge—private garages.*

Can you please clear up, once and for all, the question of development charges and private garages of less than 1,750 cubic ft. to be erected in the curtilage of a dwelling-house in respect of which no other calls on third schedule tolerances have yet been made. There were some early conflicting statements by responsible people, including the Minister, on this subject. I had taken your note on p. 221 as clear and concise. However, Practical Point 18 on p. 567 raises a doubt in my mind.

Is there any difference from a development charge viewpoint between a proposed garage to be attached to the house and one which is detached and to be erected at the bottom of the garden with access from a side street? Also, in either or both cases is it necessary to complete D.1 for a formal "Nil" determination? [S. & Co.]

ANSWER

Under para. 3 of the Third Schedule a dwelling-house may be extended by 1,750 cubic feet (or 10 per cent.). By s. 112 (2) the erection of an additional building within a curtilage is an enlargement of the original building. The erection of a garage requires planning permission as an operation, but if within the limit of 1,750 cubic feet (or 10 per cent.) the operation is exempt from development charge whether the garage is a lean-to or a separate building.

The use of the premises as a garage is covered by s. 12 (2) (*d*) from which it appears that if the garage is let to a neighbour, planning permission will be necessary. It may be said that this will represent very little real change but it takes the use from "not development" to "development" and that presumably is a material change of use.

There is no need to complete Form D.1 where there is exemption under the Third Schedule (s. 69 (2) (*a*)). [W. A. L.]

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